1858

SUPREME COURT OF THE UNITED STATES.

No. 157.

JOHN A. WARNER ET AL., APPELLANTS,

vs.

THOMAS P. MARTIN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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Docket entries.

In the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit.

Of April session, 1842, No. 2.

Thomas P. Martin, a citizen of the State of Virginia, who survived Spencer Franklin, also a citizen of the State of Virginia, lately trading as Martin & Franklin, complainants, vs. John A. Warner, a citizen of the State of Pennsylvania, John A. Warner & Co., citizens of the same State, and William Heald, Jacob Heald, Samuel Woodward, and A. J. Buckner, all citizens of the same State, trading as Heald, Woodward & Co., defendants. } Equity.

T. J. Wharton.

Fallon, for Woodward, and Buckner and Heald.
Meredith, for J. A. Warner
Meredith and H. M. Phillips, for Warner.

1841.—Oct. 26. Bill filed and subpœna issued; returnable rule day in November next.

1841.—Nov. 1. Service of subpœna accepted by Mr. H. M. Phillips for John A. Warner, and by Mr. Fallon for Woodward and Buckner.

" " " On motion of Mr. Wharton, for complainant, the bill is amended by striking out the words "citizens of the State of Pennsylvania, as applied to William Heald and Jacob Heald, and inserting "who reside out of the jurisdiction of this court."

" Nov. 2. Recog. of James Wright, as security for costs, filed.

1842.—Mar. 23. Rule on defendants to answer in one month.

" April 12. Answer of John A. Warner filed.

" " 13. Answer of Heald, Woodward & Co., filed.

" " 14. Exceptions to answer of Heald, Woodward & Co., filed, and rule for better answer.

" " 28. Exceptions to answer of John A. Warner filed, and rule for better answer.

" Nov. 11. Exceptions sustained and further answers ordered.

1843.—Mar. 1. Further answer of John A. Warner filed.

" April 7. Further answer of Heald, Woodward & Co., filed.

" " " Replication to further answer of John A. Warner, filed.

" " " Replication to further answer of Heald, Woodward & Co., filed.

" " 11. On motion of Mr. Wharton, for complainant, referred to J. A. Phillips, esq., as master, to take testimony.

1844.—May 6. On motion of Mr. Warton, for complainant, leave granted to file replication nunc pro tunc. Replication filed.

1846.—Oct. 7. Deposition of Charles M. Connolly filed.

" " " Master's report and depositions filed.

1847.—April 29. Bill, answers, and exhibits, to be printed by agreement of counsel—the cost of printing to be taxed in the bill of costs.

" Sept. 28. Court refer to Mr. J. A. Phillips, to take further testimony, &c.

" " " Leave granted to defendants to file further answers on or before the first Monday of November next.

" Oct. 11. H. Wharton Griffith, esq., of New York, is appointed a commissioner to take depositions under interrogatories filed, or to be filed, in this case.

" " 14. Rule for commission to New York.

" " " Interrogatories on the part of the complainant, for commission to New York, filed.

" " 22. Cross interrogatories e. p. defendants, for commission to New York, filed.

1847.—Nov. 1. Farther answer of John A Warner filed

" " 6. The complainant in the above case, by his counsel, excepts or demurs to the cross interrogatories marked 2, 3, 4, 5, 6, 7, 8, 9, and 10, filed on behalf of John A. Warner, one of the respondents; because the same are irrelevant and require the witness or witnesses to testify to matters not interrogated to by the interrogatories in chief.

The complainant in the above case, by his counsel, excepts or demurs to the cross interrogatories marked 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13, filed on behalf of the respondents, Heald, Woodward & Co.; because the same are irrelevant and require the witness or witnesses to testify to matters not interrogated to by the interrogatories in chief.

The complainant excepts or demurs to the cross interrogatory marked 14, filed on behalf of the same respondents; because the said interrogatory is not in conformity with the form prescribed by the LXXIst of the rules of practice for the courts of equity of the United States.

" Nov. 15. The court grant leave to the counsel for Heald, Woodward & Co., to withdraw the 14th or last cross interrogatory, on their behalf, and to substitute another therefor. (See files.)

" " " Time to file further answer, plea, or demurrer, so far as respects Heald, Woodward & Co., defendants, extended to November 22, 1847.

1847.—Nov. 22. Defendants' joinder in commmission and interrogatories filed.

" Dec. 3. Cross interrogatories on the part of complainant, on commission to New York, filed.

" " 14. Commission to New York, exit.

" " 24. Commission to New York returned, opened, and filed.

1848.—Jan. 21. Motion of T. J. Wharton, esquire, for the complainant, for an order that "the further answer, demurrer, and plea, of Heald, Woodward & Co.," defendants in this case, be taken off the file, or dismissed. To be heard on Saturday, the 29th January instant, at 11 o'clock, a. m.

" " 29. And now, January 29, 1848, motion of T. J. Wharton, esquire, to take from the file, or dismiss the demurrer and plea filed in this case by Mr. Fallon, for Heald & Co., granted, and the demurrer and plea ordered to be taken from the file.

April 12. " Replication to the further answer of John A. Warner filed.

" " " Replication of complainant to the further answer of Heald, Woodward & Co., filed.

" Sept. 25. Decree of the court for complainant.

" Oct. 21. Final decree entered as follows: This cause having been heard and debated before the judges, by counsel on both sides, on the 25th, 26th, 27th, and 28th of April last, upon the bill, answers, and proofs, taken in the cause, the court do order and decree, that the defendants do pay to the complainant the sum of 2,869$\frac{14}{100}$ dollars, with interest from the 25th of September, 1848, this being the amount of such of the bills of exchange, accepted by Esenwein & Co. upon the tobacco shipped to the said Esenwein & Co., as were paid by the complainant, together with the charges of protest and re-exchange, by them incurred and borne, by reason of the non-payment of such acceptances by said Esenwein & Co., deducting therefrom the balance which would have been payable to Esenwein & Co. by the complainant, if the said acceptances had been paid by said Esenwein & Co., interest being charged for and against the parties according to law.

1848.—Oct. 26. From which decree the defendants pray an appeal to the Supreme Court of the United States, which is granted upon giving bond and security, to be approved by the court.

" " " Appeal of defendants filed.

1848.—Oct. 26. Affidavits of A. J. Buckner and John A. Warner filed.

" " " Recognizance of A. J. Buckner and others, in the sum of six thousand dollars, approved by the court, and filed.

" " " Death of Samuel Woodward and Jacob Heald, two of the defendants, is suggested by the counsel for the defendants surviving.

" Nov. 2. Agreement in respect to the substitution of the executor and administrator of Heald and Woodward, deceased, and the revival of the suit against them, filed.

UNITED STATES OF AMERICA,
Eastern district of Pennsylvania, ss:

I, George Plitt, clerk of the circuit court of the United States, in and for the district aforesaid, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the docket entries, in the case of Thomas P. Martin vs. John A. Warner et al., in equity, now remaining of record in my office.

In testimony whereof I have hereunto set my hand and affixed the [L. S.] seal of the said circuit court, at Philadelphia, this fourth day of November, A. D. 1848, and in the seventy-third year of the independence of the said United States.

GEORGE PLITT, *Clerk, C. C.*

Bill of complaint.

Pleas before the honorable the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, of April session, 1842.

It is thus contained—

April session, 1842.—*Bill in Equity.*

Thomas P. Martin, a citizen of the State of Virginia, who survived Spencer Franklin, also a citizen of the State of Virginia, lately trading as Martin and Franklin, complainants,

vs.

John a Warner, a citizen of the State of Pennsylvania, John A. Warner and Co., (citizens of the same State,) and William Heald, Jacob Heald, Samuel Woodward and A. J. Bucknor, (all citizens of the same State,) trading as Heald, Woodward and Co., defendants. } No. 2.

To the honorable the judges of the circuit court of the United States, for the district of Pennsylvania, in the third circuit, sitting in equity.

Humbly complaining, showeth unto your honors your orator, Thomas P. Martin, a citizen of the State of Virginia, and resident there,

who survived Spencer Franklin, also a citizen of the State of Virginia, trading together as Martin and Franklin.

That the said firm of Martin and Franklin, who transacted business in the city of Richmond, in the State of Virginia, consigned at different times large quantities of manufactured tobacco to Charles Esenwein and Co , for sale on account of the said firm of Martin and Franklin; the said Charles Esenwein and Co. carrying on business as known commission merchants, or factors, in the cities of Philadelphia, New York, and elsewhere. During the spring and summer of 1841, the said Martin and Franklin consigned to the said Charles Esenwein and Co. upwards of two hundred and fifty boxes of manufactured tobacco, of the value of five thousand dollars and upwards.

About the end of August, or beginning of the month of September last, the said firm of Charles Esenwein and Co. became embarrassed in their circumstances, and the principal or acting partner, Charles Esenwein, left this country abruptly, and as your orator is informed and believes, absconded, in consequence of the pecuniary difficulties of his house. The said Charles Esenwein left in charge of his business in the city of New York, a clerk or agent of the name of Caprano. At or about the time of the insolvency of the firm of Esenwein and Co., and the departure of the said Charles Esenwein, the said firm of Martin and Franklin had in the hands of Esenwein and Co. one hundred and thirty whole boxes of manufactured tobacco, and one hundred and twenty half boxes of the same; all of which were branded or otherwise distinctly marked with the name of your orator, Thomas P. Martin. Shortly after the said Charles Esenwein had absconded, and as your orator charges, with full knowledge of the fact of such departure, and of the insolvency of the firm of Charles Esenwein and Co., a certain John A. Warner, of the city of Philadelphia, a citizen of the State of Pennsylvania, either trading on his own account and in his own name, or with some other person or persons, under the name or style of John A. Warner and Co., (which person or persons your orator craves leave hereafter when known to add to this bill as parties, with apt words to charge them,) obtained from the said firm of Esenwein and Co., or from the said Caprano, or from some other person or persons having charge of their business, all the said boxes and half boxes of manufactured tobacco belonging to the said Martin and Franklin; the said John A. Warner, or John A. Warner and Co., well knowing that the same were not the property of the said Charles Esenwein and Co., but the property of the said Martin and Franklin; and without any consideration or price having been paid by the said John A. Warner, or John A. Warner and Co., at the time, or at any time since, to the said Martin and Franklin, or to any one for them, and without the knowledge or consent of the said Martin and Franklin.

And your orator further charges, that the said John A. Warner, or John A. Warner and Co., had been for some time previously to the said transaction concerned, or connected in business, with the said Charles Esenwein and Co., and that the said Charles Esenwein had an interest in the business of John A. Warner, or John A. Warner

and Co., and that a partnership for some purposes, and to some extent, existed between them.

And your orator further charges, that the said John A. Warner, or John A. Warner and Co., having so as aforesaid obtained possession of the property of your orator's said firm of Martin and Franklin, did shortly afterwards by, or in pursuance of, some arrangement or agreement with William Heald, Jacob Heald, Samuel Woodward, and A. J. Bucknor, citizens of the State of Pennsylvania, carrying on business in the city of Philadelphia under the firm of Heald, Woodward and Co., assign or transfer the said tobacco to the said Heald, Woodward and Co., or placed or deposited the same in their hands, or caused the same to be brought from the city of New York, and delivered to the said Heald, Woodward and Co., who well knew that the said tobacco was not the property of the said Esenwein and Co., nor of the said John A. Warner, or John A. Warner and Co., but of the said Martin and Franklin.

And your orator further charges, that at the time of this transaction the said Heald, Woodward and Co., were agents and correspondents of Martin and Franklin in the city of Philadelphia, and had so been for some considerable time previously thereto, and were, and had been, as such, intrusted with the charge and care of the business and interest of the said Martin and Franklin in the said city of Philadelphia, and as such agents and correspondents the said firm of Heald, Woodward and Co., were bound by the rules of law, as well as by those of equity and just dealing, to refuse to be parties to any transaction or arrangement by which the interests or rights of the said firm of Martin and Franklin might be affected or prejudiced, and were bound to communicate to the said firm of Martin and Franklin all and every information that they possessed touching their property and interests, and to protect and secure the same in every way in their power.

And your orator further states and charges, that on the thirteenth day of September last, 1841, the said Martin and Franklin wrote to Heald, Woodward and Co., the following letter, which was written by your orator in the name and on behalf of the firm, viz:

RICHMOND, *September* 13, 1841.

Messrs. HEALD, WOODWARD AND CO., PHILADELPHIA.

GENTLEMEN: I am just from New York, looking after our tobacco that we had shipped on consignment to Charles Esenwein and Co. Mr. E. Caprano, their clerk, that holds a power of attorney from Esenwein and Co., handed me a memorandum of tobacco sold. Amongst those names is John A. Warner and Co., of Philadelphia, sold to them on the 2d September, 250 boxes our tobacco, 234 boxes branded Thomas P. Martin, and 16 boxes branded H. Wet and Son. Their attorney informed one of us (Martin) that it was sold for cash, which is not likely as the house failed on the next day, and we also observed in the assignment made in Philadelphia this Warner and Co. are fully secured in the first class made soon after. We wish to beg the favor of you to get the opinion of some able counsel for us, whether we can

claim this tobacco fraudulently taken from us under the cover of a cash sale evidently to secure themselves at our loss. We had made drafts on them of which about $2,000 had been paid, and they have sold to other persons over half that amount, for which they had heretofore charged a guarantee commission.

Any expense you may have to pay will be cheerfully allowed by, your obedient servants,

(Signed) MARTIN AND FRANKLIN.

We have enclosed the memorandum. It is not signed, but Mr. Spear of New York will testify to the writing.

On the 16th of September last, the said Heald, Woodward and Co., wrote the following letter to your orators' said firm of Martin and Franklin, viz:

PHILADELPHIA, *September* 16, 1841.

Messrs. MARTIN AND FRANKLIN.

GENTLEMEN: Your favor of the 13th instant came duly to hand, and in reply thereto we proceed to give you information in relation to the tobacco, &c., sold by C. Esenwein and Co. of New York to Messrs. Warner and Co. of this city. The latter house, we are told, loaned to Esenwein their notes and cash to the amount of fifty thousand dollars, and something over; they were induced to make this loan in consequence of representations by Esenwein that this amount would be sufficient to enable his house to meet all their liabilites until he could have time to get to Europe and remit home sufficient funds to return the loans.

After Esenwein had left the United States, Mr. Warner was satisfied in his own mind that he had been deceived by him, and in order to secure himself from ruin, he proceeded to purchase a sufficient amount of property from the attorney left by Esenwein in charge of his business. We were pained to learn that you were among the sufferers, and that you will not in all probability be able to recover any portion of the tobacco which you state was sold to Mr. Warner, as we believe the whole matter was arranged under the advice of eminent counsel engaged by Mr. Warner both in New York and this city. We think, therefore, that any attempt made to recover the tobacco would be attended with great expense, and in the end prove fruitless.

Very respectfully, your obedient servants,

(Signed) HEALD, WOODWARD & Co.

And your orator charges, that at the time this letter was written the said Heald, Woodward and Co., had in their possession, or under their control, the said two hundred and fifty boxes of tobacco, so branded and marked, or a large part or portion of the same; and which your orator believes, and so charges, were known to them to be the property of Martin and Franklin, and not the property of the said Charles Esenwein and Co., or of the said John A. Warner, or John A. Warner and Co.; and the said Heald, Woodward and Co., were therefore

bound, in good faith, and by their duty and obligations as agents for the said Martin and Franklin, to retain and keep the said tobacco for the benefit of the said Martin and Franklin, their principals, and not to part with the same, nor to appropriate the same, or the proceeds thereof, to their own use; and your orator further charges, that even if the said Heald, Woodward and Co., were ignorant at the time they received the said tobacco that it belonged to the said Martin and Franklin, yet that, on receiving information and notice of the fact, it was their duty as agents to institute legal proceedings for the security and protection of the interests of their principals, the said Martin and Franklin.

Your orator further shows, that the said firm of Martin and Franklin drew five drafts upon the said Charles Esenwein and Co. against the tobacco so shipped as aforesaid, viz., one for twelve hundred and fifty dollars, which has been paid, and one for eight hundred dollars, one for seven hundred dollars, one for three hundred dollars, and one for eight hundred and fifty dollars, all at four months; which last mentioned four drafts all remained unpaid by the said Charles Esenwein and Co.; two of which the said Martin and Franklin have been obliged to take up, and the remaining two they will be obliged in like manner to provide for.

And your orator further shows, that he has applied to the said John A. Warner, and to the said Heald, Woodward and Co., to restore to him the tobacco so as aforesaid illegally taken and withheld, or to pay to your orator the proceeds or value of the same, or such part thereof as he was in law and equity entitled to receive; and your orator well hoped that they or some of them would have complied with his requests, as in justice and equity they ought to have done.

But now, so it is, may it please your honors, that the said John A. Warner, and the said John A. Warner and Co., and the said Heald, Woodward and Co., combining and confederating together, and with divers other persons at present unknown to your orator, whose names when discovered he prays may be inserted with apt words to charge them as parties dependants hereto, absolutely refuse to comply with such requests; and they at some times pretend that the said John A. Warner purchased the said tobacco from the said Charles Esenwein and Co. in good faith, and that the said Heald, Woodward and Co., purchased the same from the said John A. Warner, or John A. Warner and Co., in good faith; whereas your orator charges the contrary to be the fact in both instances, and that the whole transaction, as well on the part of the said Heald, Woodward and Co., as of the said John A. Warner, and John A. Warner and Co., was collusive and fraudulent, and contrary to law, equity, and good conscience.

All which actings and doings, &c., are contrary to justice and equity, and to the manifest wrong and injury of your orator, &c.

In consideration whereof, and forasmuch as your orator can only have adequate relief in the premises in a court of equity, where matters of this nature are properly cognizant and relievable:

To the end, therefore, that the said John A. Warner, and John A.

Warner and Co., and the said William Heald, Jacob Heald, Samuel Woodward, and A. J. Bucknor, trading as aforesaid, and their confederates when discovered, may, upon their several and respective oaths or affirmations, to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated, and he and they distinctly interrogated thereto; and more especially that they in manner aforesaid answer:

Whether the said firm of John A. Warner and Co. is not composed of the said John A. Warner and other persons, and who such other person or persons is or are; and who such person or persons was or were, if the partnership of John A. Warner and Co. is dissolved.

Whether the said John A. Warner, or John A. Warner and Co., did not obtain or procure, or receive from the said firm of Charles Esenwein and Co., or from one of them, or from some person having charge or care of their business, in the month of August or September last, about one hundred and thirty whole boxes of manufactured tobacco, and about one hundred and twenty half boxes of the same, branded or marked with the name of your orator, or with the initials thereof; and whether any, and if any what, price or consideration was paid or secured to be paid for the same; and whether at the time of obtaining the said tobacco the said John A. Warner, or John A. Warner and Co., did not know or believe, or had reason to know or believe, that the same, in part or in whole, did not belong to the said Charles Esenwein and Co., but was consigned to them for sale, and was the property of Martin and Franklin, or of your orator, and was consigned by the said Martin and Franklin to Charles Esenwein and Co.

Whether the said John A. Warner, or the firm of John A. Warner and Co., was not connected in business to some extent, or in partnership in some way, with the said Charles Esenwein and Co., or some of the members of that firm; and that the particulars and extent of such connection or partnership may be set forth fully and explicitly; and whether the insolvency of the said firm of Charles Esenwein and Co., and the departure of the said Charles Esenwein for Europe, or some foreign country, were not known to the said John A. Warner, or John A. Warner and Co., before he or they got possession of the said tobacco; and whether the said John A. Warner, or John A. Warner and Co., did not obtain possession of the said tobacco with the view or intention of raising money therewith, to meet the engagements of the said firm of Charles Esenwein and Co., or for their benefit or advantage, and not for the benefit or advantage of the said Martin and Franklin.

Whether the said tobacco, so belonging to Martin and Franklin, and obtained by John A. Warner, or John A. Warner and Co., from Charles Esenwein and Co., or their agent, was not transferred or assigned, or delivered to the said firm of Heald, Woodward and Co., and in what manner, and when and how the said tobacco came into the possession of the said Heald, Woodward and Co., and for what purpose; and

whether the said Heald, Woodward and Co., did not, at the time of obtaining or receiving the said tobacco, know or believe, or have reason to know or believe, that the said tobacco, in part or in whole, did not belong to the said Charles Esenwein and Co., or to the said John A. Warner, or John A. Warner and Co., but was the property of Martin and Franklin, and consigned by them to the said Charles Esenwein and Co.; and whether the said boxes and half boxes were not branded or marked with the name of your orator, or with the initials thereof; and if not, when such brand or mark was effaced, or defaced, and by whom?

Whether the said firm of Heald, Woodward and Co., were not at some time, and when, and at or before the receipt by them of the said tobacco, correspondents and agents of the said firm of Martin and Franklin, or of your orator; and how long such correspondence or agency had subsisted; and whether the said Heald, Woodward and Co., did not receive from the said Martin and Franklin, on or about the fifteenth or sixteenth of September last, a letter in words or substance such as is hereinbefore set forth, or some other letter, and if any other, that they may annex it, or a true copy thereof, to their answer; and whether at the time of receiving the said letter they had not in their possession, or under their control, the said tobacco or some part thereof, or the proceeds thereof; and if not, in whose hands or possession the said tobacco then was, and by whom the property in the said tobacco was then claimed; and whether they took the opinion of counsel as requested in the said letter; and whether the letter herein before set forth, dated "Philadelphia, Sept. 16th, 1841," and addressed to "Messrs. Martin and Franklin," was not written and sent to the said firm of Martin and Franklin, of Richmond, Virginia, by the said Heald, Woodward and Co., or some one for them; and by whom the said Heald, Woodward and Co., were told that Messrs. Warner and Co. had loaned their notes and cash to Esenwein and Co., and of their inducements to make the loan, and the other circumstances mentioned in the said letter; and whether the said Heald, Woodward and Co., informed the said Martin and Franklin, or your orator, either verbally or by letter, of their having any of the said tobacco in their possession, and if so, when; and if any other letter was written by them to Martin and Franklin, that it may be annexed to their answer; and whether the said Heald, Woodward and Co., or one of the firm, had not at some time prior in time to the date of the letter to them herein before set forth, viz., the 13th day of September, 1841, a conversation with your orator in the city or county of Philadelphia, on the subject of the said tobacco so belonging to the said Martin and Franklin in the hands of the said Charles Esenwein and Co., and what was the substance and effect of the said conversation; and also what disposition has been made by the said Heald, Woodward and Co., of the said boxes and half boxes of manufactured tobacco belonging to your orator, received by them from the said Charles Esenwein and Co., or from the said John A. Warner, or John A. Warner and Co.

And that the defendants may answer the premises, and that they may

set forth a true and full account of all their dealings and transactions with the said Charles Esenwein and Co., and with each other in respect to the premises; and also a full and true account of all sums of money, goods and chattels, received by them respectively, or by any person or persons for them, or either of them, for or in respect to the sales, if any have taken place, of the boxes and half boxes of manufactured tobacco belonging to the said Martin and Franklin, or to your orator, and received from the said Charles Esenwein and Co.; and also a full and true account and inventory of all such tobacco remaining in the possession or control of them, or either of them, or of any one for them, or either of them; and that the defendants may be decreed to pay to your orator all such money as they may have received for the sale of such tobacco, and to deliver to your orator all notes and other evidences of debt or securities that they may have taken on such sale, and all goods and chattels that they may have received in exchange therefor, and all such of the said tobacco as may remain in the possession or under the control of them, or either of them.

And that your orator may have such other or further relief in the premises, as the nature and circumstances of this case may require, and to your honors shall [seem] meet, &c.:

May it please your honors to grant to your orator a writ of subpœna, to be directed to the said John A. Warner and John A. Warner and Co., and to the said William Heald, Jacob Heald, Samuel Woodward, and A. J. Bucknor, trading as Heald, Woodward & Co., commanding them, and every of them, at a certain day and under a certain penalty, &c., to be and appear before your honors, in this honorable court, and then and there full, true, direct, and perfect answer make to all and singular the premises, and further to stand to, perform, and abide such further order, direction, and decree therein as to your honors shall seem meet.

And your orators shall ever pray, &c.

T. J. WHARTON, *for the complainant.*

Amendment to bill.

Afterwards, to wit, on the first day of November, one thousand eight hundred and forty-one:

On motion of T. J. Wharton, for the complainant, leave is given to amend the bill filed in this case, by striking out the words "Citizens of the State of Pennsylvania," so far as they apply to William Heald and Jacob Heald, and by adding after the names of William Heald and Jacob Heald "who reside out of the jurisdiction of this court."

Answer of John A. Warner.

Afterwards, to wit, on the twelfth day of April, A. D. one thousand eight hundred and forty-two, comes John A. Warner, one of the defendants named in the said bill, and by his solicitors, Wm. M. Meredith and Henry M. Phillips, esquires, presents his answer thereto, which being read and filed is in the words following, to wit:

To the honorable the judges of the circuit court of the United States, for the district of Pennsylvania, in the third circuit, sitting in equity:

The answer of John A. Warner to the bill of complaint of Thomas P. Martin, a citizen of the State of Virginia, who survived Spencer Franklin, trading together as Martin and Franklin:

The defendant, (John A. Warner,) now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant answering, says:

That he believes it to be true that the complainants consigned, at different times, large quantities of manufactured tobacco to Charles Esenwein and Co., for sale on account of the said complainants; but this the respondent does not know of his own knowledge; nor does he know, nor has he been informed, save by complainants' said bill of complaint, and cannot set forth further, as to his belief or otherwise, whether the said complainants, during the spring or summer of 1841, did or did not consign to said Esenwein and Co. any manufactured tobacco of the value of five thousand dollars and upwards, or any lesser sum; and this respondent does not know, and therefore cannot state, whether or not, at the time of the said departure of said Esenwein, as contained in complainants' said bill of complaint, the complainants had in the hands of said Esenwein and Co. any tobacco whatever; and the said respondent, further answering, saith, that he did purchase, and thereby obtain, from the said Esenwein and Co., through the said Caprano, who respondent believes was the agent and clerk of said Esenwein and Co., and having charge of their business, as stated in complainants' said bill of complaint, a quantity of tobacco, exceeding in quantity the amount stated in said bill of complaint; but this respondent says that he believed them at the time of his said purchase of said Esenwein and Co. to belong to the said Esenwein and Co., and he does not now know that they did not so belong to them, nor has he any information other than as contained in the complainants' said bill of complaint, and did not know that the same belonged to the said Martin and Franklin; that the same were purchased for full consideration and price in like manner as respondent had frequently purchased from the said Esenwein and Co.; and this respondent says that he never had been nor was he connected or concerned in business with the said Charles Esenwein and Co., and that the said Charles Esenwein had no interest in the business of this respondent and of John A. Warner and Co., and that no partnership, for any purposes and to any extent, existed between them. This respondent states that he and the said Charles Esenwein did formerly conduct business as partners under the name of John A. Warner and Co., but that the said partnership was fully dissolved and determined prior to the first day of May, one thousand eight hundred and thirty-nine. The respondent, further answering, says, that he did,

subsequent to his said purchase, sell to the said Heald, Woodward and Co., a large quantity of tobacco, together with other goods—principally wine, cigars, and tobacco, manufactured and unmanufactured—amounting altogether to more than twenty thousand dollars, which were sold upon the 6th and 9th September, 1841, bona fide, and for a full and fair consideration; that among the said goods there were some boxes branded with the names of complainants, or the initials thereof; how many this respondent does not know, and therefore cannot state, but not so many as is mentioned in complainants' said bill of complaint; and this respondent, further answering, [says] that he does not know, and therefore cannot state, whether or not the said Heald, Woodward and Co., were agents to, and correspondents of, the said Martin and Franklin, in the city of Philadelphia, and does not know whether or not there was the correspondence, or any part thereof, or any correspondence between them, as stated in complainants' said bill of complaint. This respondent does not know whether or not it is true that the said firm of Martin and Franklin drew five drafts upon the said Esenwein and Co., as stated in complainants' said bill of complaint. This respondent, further answering, says, that it is not true that the said complainant did apply to this respondent to restore to him the tobacco, nor to pay him the proceeds or value of the same, or any part thereof; and whether or not the complainant did make such application to the said Heald, Woodward and Co., this respondent does not know, and therefore cannot state. Respondent, however, states, that on or about the 28th September, 1841, he received a letter from T. J. Wharton, esq., solicitor for the said complainant, a copy of which is hereto annexed, (A,) and which respondent prays may be taken as part of this his answer.

And this respondent further answering says, that about the last day of August, or beginning of September last past, he did obtain, procure, and receive from the said Caprano, having charge and care of the business of said Esenwein and Co. in New York, a large quantity of manufactured tobacco, as he has before stated; that he purchased the said tobacco, together with a large quantity of other merchandise, as unmanufactured tobacco, cigars, wine, and otto of roses, and that he paid for the same the full value and price thereof, amounting to more than thirty thousand dollars, and that at the time of obtaining the said merchandise or any part thereof this respondent did not know, nor believe, nor had he reason to believe, that the same, in whole or in part, did not belong to the said Charles Esenwein and Co., but was consigned to them for sale, and was the property of the said Martin and Franklin, or of the said complainant, and was consigned by the said Martin and Franklin to the said Charles Esenwein and Co.

Respondent further answering says, that he was not, nor was the firm of John A. Warner and Co., connected in business to some extent with the said Charles Esenwein and Co., or some of the members of that firm; but that he frequently purchased largely from the said Charles Esenwein and Co.

The insolvency of said Esenwein and Co. was believed, and the de-

parture of said Charles Esenwein for Europe was known, by this respondent before he purchased or got possession of the said tobacco; but this respondent says, it is not true that he obtained possession of the said tobacco with the view or intention of raising money therewith to meet the engagements of said firm of Charles Esenwein and Co., and for their benefit and advantage. Respondent further says, that a portion of the tobacco purchased by him as aforesaid from said Esenwein and Co. was sold, assigned, transferred, and delivered to said Heald, Woodward and Co., and the same was delivered to them, upon such sale as aforesaid, at or about the 9th September, 1841, and that some of the said boxes of tobacco were marked as is heretofore stated. And this respondent denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged; without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of this respondent; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

W. M. MEREDITH,
HENRY M. PHILLIPS,
Of counsel for Warner.

John A. Warner, above named, being duly affirmed, says, that the several facts and statements in the above answer set forth are true to the best of his knowledge, remembrance, information, and belief; that so far as they depend on his own personal knowledge they are true; and so far as they depend on the knowledge of others, he believes them to be true.

JOHN A. WARNER.

Affirmed and subscribed before me, this eleventh day of April, A. D. 1842.

MORDECAI Y. BRYANT,
Alderman, county of Philadelphia.

A.

Messrs. John A. Warner and Co.

Gentlemen: Messrs. Martin and Franklin, of Richmond, Virginia, have placed in my hands a claim upon you for the value of 250 boxes of tobacco, belonging to them, which, as it is represented, were obtained by you from Esenwein and Co., as their agent, about the 2d instant.

My instructions are to commence suit immediately for the recovery of the property.

I shall be glad, however, to be the means of making an arrangement of the claim, but if this is out of the question, I will thank you to refer

me to your attorney, that some of the inconveniences and expenses of ligitation may be avoided.

Yours, respectfully,

T. J. WHARTON.

No. 150, WALNUT STREET,
September 24th, 1841.

Answer of Heald, Woodward and Co.

Afterwards, to wit, on the thirteenth day of April, A. D. one thousand eight hundred and forty-two, come William Heald, Jacob Heald, Samuel Woodward, and A. J. Bucknor, trading as Heald, Woodward and Co., four of the defendants named in the complainant's said bill, by their solicitor, Christopher Fallon, esquire, and present their answer thereto, which, being read and filed, is in the words following, to wit:

To the honorable the judges of the circuit court of [the] United States, for the district of Pennsylvania, in the third circuit, sitting in equity.

The answer of William Heald, Jacob Heald, Samuel Woodward, and A. J. Bucknor, trading as Heald, Woodward and Co., defendants to the bill of complaint of Thomas P. Martin and Spencer Franklin, trading as Martin and Franklin, complainants.

The defendants, now and all times hereafter, saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, these defendants answering say:

That they believe it to be true, that the complainants consigned at different times large quantities of manufactured tobacco to Charles Esenwein and Co. for sale on their account as alleged in complainants' bill, but this they do not know of their own knowledge; nor do they know, nor have they been informed, save by the said complainants' said bill, and by the letter in said bill referred to as addressed by complainants to them, and cannot set forth further as to their belief, or otherwise, whether the said complainants, during the spring or summer of 1841, consigned to the said Charles Esenwein and Co. upwards of two hundred and fifty boxes of manufactured tobacco, of the value of five thousand dollars and upwards, or any lesser quantity of any other value, nor whether, at the time of the departure from this country of the said Charles Esenwein, the complainants had in the hands of Esenwein and Co. one hundred and thirty whole boxes of manufactured tobacco, and one hundred and twenty half boxes of same, or any less quantity thereof.

And these defendants further say, that they have no knowledge of their own as to who the persons are, if there be more than said John A. Warner, that compose the firm of John A. Warner and Co.; they have been informed and believe that Charles Esenwein, at one time, was a

partner in said firm, but that he retired from said firm, and ceased to be a member of said firm between three and four years ago.

And these defendants further say, that they do not of their own knowledge know, but they are informed and believe, that said John A. Warner did, in the month of August or September last, procure from said Charles Esenwein and Co. certain boxes and half boxes of manufactured tobacco, of what quantity defendants know not, and these defendants are informed and believe, that the said tobacco was bought by the said John A. Warner from the said Charles Esenwein and Co., or from some one duly authorized by said firm to sell the same in their name, fairly and bona fide and for a full consideration; and these defendants do not know that the said John A. Warner, or John A. Warner and Co., knew or believed, or had reason to know or believe, at the time of said sale that said tobacco in whole or in part did not belong to said Charles Esenwein and Co., and was the property of complainants. But these defendants believe that said Charles Esenwein and Co. had full power and authority to sell and dispose of said tobacco in their own name.

And these defendants further answering say, that they do not know that the said John A. Warner, or John A. Warner and Co., were connected in business to any extent, or in partnership in any way with the said Charles Esenwein and Co., or any of the members of that firm; they have been informed and believe that said Charles Esenwein, as before stated, was at one time a member of said firm of John A. Warner and Co., but that he ceased to be such between three and four years ago, and has ever since ceased to be such.

And these defendants further answering say, that they do not know that there was any tobacco belonging to Martin and Franklin, obtained by John A. Warner, or John A. Warner and Co., or their agent, as alleged in said bill; but these defendants did, on the sixth and ninth days of September last past, purchase from John A. Warner, fairly and bona fide, and for a full and fair consideration, a large quantity of goods, consisting principally of Rhenish wine, segars, and tobacco, manufactured and unmanufactured, and amounting to upwards [of] twenty thousand dollars; that among said goods so purchased were sundry boxes of manufactured tobacco of various brands, and marks of different manufacturers; that some of said boxes, but how many defendants know not, were branded with the name of complainants, or the initials thereof; but these defendants did not know or believe, nor had they reason to know or believe, that the said tobacco in whole or in part did not belong to the said John A. Warner at the time of said sale, nor that the same was the property of said complainants; on the contrary, these defendants had been for many years in the habit of purchasing tobacco of various kinds from said John A. Warner, and John A. Warner and Co., and at the time of said purchase by defendants as aforesaid, said John A. Warner appeared to be the ostensible owner of said tobacco, and defendants believed, and had no reason to believe the contrary, that said John A. Warner, or said John A. Warner and Co., were the true and bona fida owners thereof; that the mere brand of complainants' names

on the boxes gave defendants no reason whatever to believe that the tobacco belonged to complainants, but was merely an intimation of the names of the shippers or manufacturers; further defendants say, that they have no knowledge of their own of the views or intentions of said John A. Warner in purchasing said tobacco from said Charles Esenwein and Co.

And these defendants further say, that they have been correspondents of complainants, and one of the agents in the city of Philadelphia for the sale of tobacco manufactured by complainants. And they admit, that on or about the sixteenth day of September last they did receive from complainants a letter, in words or substance such as in their said bill is set forth, and did reply thereto under date of September 16, 1841, as in said bill is set forth; and at the time of the receipt of said first mentioned letter defendants had in their possession, or under their control, a part of said tobacco purchased by them as aforesaid, and the same was claimed by defendants as their own property. And these defendants further say, that they did not take the advice of counsel as requested in complainants' said letter, because they thought it useless for the reasons set forth in their said answer to said letter; and further defendants say, that as to the loan by John A. Warner and Co. to Charles Esenwein and Co., and the other circumstances mentioned in their letter of 16th September, 1841, they were informed of same by John A. Warner, Tobias Buhler, and Frederick Klett. And defendants further say, that the greater part of the tobacco, purchased by them as aforesaid from said John A. Warner and Co., has been sold by them, and had been so sold before the filing of complainants' bill; and these defendants deny that they were bound in good faith, and by their duty and obligation as agents of complainants, to retain and keep said tobacco for the benefit of complainants, nor to institute legal proceedings (upon receiving information or notice of the fact that the tobacco belonged to complainants) for the security and protection of the interests of complainants. On the contrary, the said defendants say, that they were not in any manner the agents of complainants with regard to said tobacco; and they do not know to this day, save so far as the complainants allege it, that the said tobacco belonged to complainants, and had received no information of said complainants' alleged ownership of said tobacco, until after they had purchased the same, bona fide and for full value, from John A. Warner and Co., as aforementioned. And defendants say, that no application was made to them or any of them by the complainants or any of them to restore said tobacco, or the proceeds or value thereof, to complainants, until the eighteenth day of October, 1841, by a note from their counsel, Mr. Wharton. And defendants further say, that at the time of defendants' purchase as aforesaid of said tobacco, and ever since William Heald and Jacob Heald, two members of said firm of Heald, Woodward and Co., resided in the State of Maryland, and the said purchase of said tobacco as aforementioned, and the several matters connected therewith, were conducted by said Samuel Woodward or A. J. Bucknor, and are within their information. And these

defendants deny all and all manner of unlawful combination and confederacy, wherewith they are by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

FALLON,
For Heald, Woodward & Co., defendants.

Samuel Woodward and A. J. Bucknor, above named, being severally sworn, saith, that the several facts and statements in above answer set forth are true, to the best of their knowledge, remembrance, information, and belief; that so far as they depend on their own personal knowledge, they are true; and so far as they depend on the knowledge of others, they believe them to be true.

SAM'L WOODWARD,
ARCHIMEDES J. BUCKNOR.

Sworn and subscribed before me, this
PR. CHRISTIAN, *Alderman.*

Exceptions to answer of Heald, Woodward & Co.

Afterwards, to wit, on the fourteenth day of April, A. D. one thousand eight hundred and forty-two, come the said complainants, by their solicitor, Thomas J. Wharton, esquire, and present their exceptions to the answer of Heald, Woodward and Co., which, being read and filed, are in the words following, to wit:

CIRCUIT COURT OF THE UNITED STATES,
District of Pennsylvania.

Between MARTIN, complainant,
and
WARNER and others, defendants. } In equity.

Exceptions taken by the said complainant to the insufficient answer of Heald, Woodward and Co., some of the said defendants.

1st. For that the said defendants, Heald, Woodward and Co., have not set forth and answered what quantity of whole boxes and what quantity of half boxes of manufactured tobacco were obtained by them from John A. Warner, or John A. Warner and Co., in the month of September, 1841; and what and how many of the said boxes and half boxes were branded or marked with the name of the complainant, or of the said late firm of Martin and Franklin, or with the initials thereof.

2d. For that the said defendants have not answered and set forth the consideration paid by them to the said John A. Warner, or John A. Warner and Co., on the alleged purchase by the said defendants of the said tobacco, and have not stated the price that they have paid or were to pay for the same, by the pound or otherwise; nor whether the said alleged sale to them of the said tobacco was for cash or on credit; and if the latter, what the extent of credit was; nor whether they have paid the said John A. Warner, or John A. Warner and Co., in full or in part for the same; nor whether the said tobacco was not taken by the said defendants of the said John A. Warner, or John A. Warner and Co., in payment of, or as security for, a precedent debt.

3d. For that the said defendants have not answered and set forth whether they had or not in their possession, or under their control, at the time of receiving the letter of the complainant, viz., on or about the 15th or 16th of September, 1841, the said tobacco or some part thereof, or the proceeds thereof, and if not, in whose hands or possession the same then was, and by whom the property in the said tobacco was then claimed.

4th. For that the said defendants have not answered and set forth whether they, or some *or* one of them, had not, at some time previous to the 13th of September, 1841, a conversation with the complainant on the subject of the said tobacco; and when and where that conversation took place, and what was the substance and effect of such conversation; and whether the defendants, or either of them, then and there informed the complainant that they had the said tobacco, or any part thereof, in their possession; and whether the defendants, or one of them, were or was not then and there informed by the complainant, that certain tobacco in the possession of Esenwein and Co. belonged to the complainant, or to Martin and Franklin, and had not been paid for by the said Esenwein and Co.

5th. For that the said defendants have not answered and set forth a true and full account of all their dealings and transactions with the said Charles Esenwein and Co., and with each other, in respect to the premises; nor a full and true account of all the sums of money, goods and chattels, received by them respectively, or by any person or persons for them, or either of them, for or in respect to the sales, if any have taken place, of the said tobacco; nor a full and true account and inventory of all such tobacco as may remain in the possession of them, or either of them, or of any one for them, or either of them, &c.

In all which particulars the said complainant excepts to the answer of the said defendants, Heald, Woodward and Co., as evasive, imperfect, and insufficient, and humbly prays that the said defendants may be compelled to put in a full and sufficient answer thereto.

T. J. WHARTON,

April 14th, 1842. *For the complainant.*

Exceptions to answer of John A. Warner.

Afterwards, to wit, on the twenty-eighth day of April, A. D. one

thousand eight hundred and forty-two, come the said complainants, by their solicitor, Thomas J. Wharton, esquire, and present their exceptions to the answer of John A. Warner, which, being read and filed, is in the words following, to wit:

In the circuit court of the United States, district of Pennsylvania.

MARTIN, complainant,
against
WARNER and others, defendants.

Exceptions taken by the said complainant to the insufficient answer of John A. Warner, a defendant:

1st. For that the said defendant, John A. Warner, has not answered and set forth who and what other persons at present compose the firm of John A. Warner and Co., nor who and what other persons did compose the said firm at and before the time of their transactions with Charles Esenwein and Co. inquired of in the said bill.

2d. That the said defendant has not answered and set forth what quantity of whole boxes, and what quantity of half boxes, of tobacco were obtained by him, or by the firm of John A. Warner and Co., from Esenwein and Co., or their clerk or agent, in the month of August or September, 1841; and which and how many of the said boxes and half boxes were branded or marked with the name of the complainant, or of the firm of Martin and Franklin, or with the initials thereof.

3d. For that the said defendant has not answered and set forth the consideration paid by him, or by John A. Warner and Co., to the said Esenwein and Co., or their clerk or agent, on the alleged purchase of the said tobacco; and have not stated the price that he or they paid, or were to pay, for the same by the pound or otherwise; nor whether the said alleged sale to him or them of the said tobacco was for cash or on a credit, and if the latter, what the extent of credit was; nor whether he or they have paid the said Esenwein and Co. in full or in part for the same, and when and how such payment, if any, was made; nor whether the said tobacco was not taken by the said John A. Warner, or John A. Warner and Co., in payment of, or as security for, a precedent debt due to him or them by the said C. Esenwein and Co.

4th. For that the said John A. Warner has not answered and set forth the consideration paid to him, or to the firm of John A. Warner and Co., on the alleged sale by him or them to Heald, Woodward and Co., of the said tobacco; and have not stated the price that was to be paid on such sale by the pound or otherwise; nor whether the said alleged sale was for cash or on a credit, and if the latter, what the extent of the credit was; nor whether he, the said John A. Warner, or the said John A. Warner and Co., have been paid for the same; nor when or how such payment, if any, was made; nor whether the said tobacco was not taken by the said Heald, Woodward and Co., in payment of, or as security for, a precedent debt due to them by the said John A. Warner, or by the said John A. Warner and Co., or by the said C. Esenwein and Co.

5th. For that the said John A. Warner has not answered and set forth a true and full account of all his dealings and transactions, and all the dealings and transactions of the said firm of John A. Warner and Co., with the said Charles Esenwein and Co., and with the said Heald, Woodward and Co., in respect to the premises; nor a full and true account of all sums of money, goods and chattels, received by him or them respectively, or by any person or persons for him or them, for or in respect to the sales, if any have taken place, of the said tobacco; nor a full and true account and inventory of all such tobacco as may remain in the possession of the said John A. Warner, or John A. Warner and Co., or of any person for him or them, &c.

In all which particulars the said complainant excepts to the said answer as evasive, imperfect, and insufficient, and humbly prays that the said John A. Warner may be compelled to put in a full and sufficient answer thereto. T. J. WHARTON.

Exceptions sustained by the Court.

And thereupon, afterwards, to wit, on the 11th day of November, A. D. one thousand eight hundred and forty-two, the exceptions to the several answers of Heald, Woodward and Co., and of John A. Warner, are sustained by the court, and further answers are ordered to be made.

Further answer of John A. Warner.

Afterwards, to wit, on the first day of March, A. D. one thousand eight hundred and forty-three, comes John A. Warner, one of the defendants named in the said complainants' bill, and presents his further answer thereto, which, being read and filed, is in the words following, to wit:

To the honorable the judges of the circuit court of the United States of America, for the eastern district of Pennsylvania, sitting in equity:

The further answer of John A. Warner to the bill of complaint of Thomas P. Martin, who survived Spencer Franklin, lately trading as Martin and Franklin, complainants.

The defendant, now and at all times, saving all exceptions for further answer to said bill of complaint, says, that this defendant alone composes the firm of John A. Warner and Co., and that no other person is, or was at the time specified in the said complainant's bill of complaint, a partner in the said firm; that about the end of August or beginning of September, in the year 1841, this defendant purchased from the firm of Charles Esenwein and Co., of New York, forty-four boxes of tobacco, branded as Martin's 8's lumps, at twelve cents per pound, and which weighed 5,720 lbs., making the price or sum of six hundred and eighty-six dollars and forty cents, ($686 40;) he also, at the same time, purchased from the said Esenwein and Co. eighteen boxes, 12's lumps, at twelve cents per lb., 2,761 lbs., amounting to three hundred and thirty-one dollars thirty-one cents, ($331 31;) also, one hundred and

twenty half boxes, branded Martin's 32's lumps, weighing 9,600 lbs., at sixteen cents per lb., and amounting to fifteen hundred and thirty-six dollars; also, sixty boxes 16's lumps, weighing 7,260 lbs., at twelve cents per lb., amounting to eight hundred and seventy-one $\frac{20}{100}$ dollars, ($871 20;) also sixteen boxes, branded Witt and Sons, 12's lumps, weighing 1,560 lbs., at eleven cents per lb., amounting to one hundred and seventy-one dollars sixty cents, ($171 60;) being, altogether, two hundred and fifty-eight boxes, containing twenty-six thousand nine hundred and one pounds of tobacco, (26,901,) for the price or sum of three thousand five hundred and ninety-six dollars and fifty-two cents, ($3,596 52.) The said firm of Esenwein and Co. and this defendant had had constant business dealings for three years prior to said sale, and the terms of sale between them were upon a credit, for manufactured tobacco of eight months, and for leaf tobacco of four months. The amount of business thus transacted was several hundred thousand dollars, which were always done upon open account, no note ever being given or taken for any purchase. This defendant has, upon several occasions, loaned to said Charles Esenwein and Co. his notes and cash, and has received in exchange for the same notes and bills of exchange, all of which was properly charged in the accounts between them; and this defendant says that the purchase first named of tobacco (viz., of 26,901 lbs.) was upon the terms of credit hereinbefore specified and set forth. And the said defendant further saith, that it is not true, as asserted in the said bill of the said complainants, that this defendant took the said tobacco as security or payment of a precedent debt due the said defendant from the said firm of Chas. Esenwein and Co., but that he, the said defendant, purchased the said tobacco bona fide, in manner as set forth aforesaid, and that the said tobacco was paid for after the said purchase by this defendant paying and adjusting thirty thousand dollars of the notes of this defendant, which were loaned to the said firm of Chas. Esenwein and Co. by this defendant, in manner as aforesaid, and by his paying and redeeming the same; and the said defendant annexes hereto a copy of the account current of all the transactions of the said defendant with the said Esenwein and Co. during the year 1841, (marked A,) which the said defendant prays may be taken as a part of this answer, which show a balance to be due this defendant at the present time. And the said defendant further saith, that it is not true, as charged in the said bill of the said complainant, that the said Charles Esenwein left this country abruptly, and absconded in manner and form as the said complainant in his said bill hath complained thereof, but that the said Charles Esenwein proclaimed the fact of his intended departure from the United States publicly and notoriously, for at least two months before he left New York, and such intended departure was generally known; and that the said C. Esenwein proclaimed it to be his intention to proceed to Europe, for the purpose of obtaining a large loan from his friends and relatives there and further that the said Esenwein has since returned, and is now, and for the last fifteen months has been, in the city of New York, transacting his busi-

ness there, and publicly attending to the same; and that the insolvency of the said Chas. Esenwein, if the said Esenwein can be said to be insolvent, consists in nothing more than a failure to meet his liabilities as soon as they became due, and that the said Esenwein, as this defendant has been informed and verily believes, has not, as yet, become a bankrupt, or applied for the benefit of the insolvent laws of this or any other State. The defendant further saith, that for a considerable period of time past he has had business transactions with Heald, Woodward and Co., and that he has bought largely of, and sold largely to, the said firm at various periods, and that, pursuant to the usual course of business between them, this defendant sold to the said Heald, Woodward and Co., on the sixth day of September, 1841, the said two hundred and fifty-eight boxes of tobacco, at the same price and on the same terms as he had purchased them from the said Chas. Esenwein and Co.; and that a few days after they were purchased from the said Esenwein & Co., and that a few days after the said sale was made, he ascertained that a large part of the said tobacco would suit his retail business, and he therefore compromised and annulled the said sale, in part, by taking back all the whole and half boxes of the said brand, with the exception of one hundred and twenty-four packages, which the said Heald, Woodward and Co., retained at the prices and on the terms before agreed upon; and the said defendant further says, that the said transaction was a bona fide sale, on the terms above mentioned, and that the said tobacco was not transferred to the said Heald, Woodward and Co., in payment of, or as security for, the payment of a precedent debt due the said Heald, Woodward and Co., by this defendant; and that the defendant had, at all times previously to the said transaction, paid promptly and at maturity all notes and debts owing by this said defendant to the said Heald, Woodward and Co., and that all debts due by this defendant at the time of the said sale were paid promptly, at maturity, without the aid, connivance, or assistance, directly or indirectly, of the said Heald, Woodward and Co.; and further, that it had always been the custom of this defendant, and the said Heald, Woodward and Co., in their business transactions, to leave their purchases stand open for sixty or ninety days. The accounts were then balanced, and notes passed for balances on either side, including interest account; and your defendant annexes hereto a copy of the account current of all the transactions of the said defendant and the said Heald, Woodward and Co., during the year 1841, (marked B,) which he prays may be considered as a part of this answer. And the said defendant further saith, that the said one hundred and twenty-four packages of boxes and half boxes were sold to the said Heald, Woodward and Co., in the manner and on the terms before set forth, and that the balance which was returned as above was disposed of at retail sales in his store, and, to the best of his knowledge and belief, were sold and disposed of in the usual and bona fide course of his business, and that he has not any tobacco of the said Martin's brand on hand or in his possession, except such as he has since purchased from A. Mullin and Son, and Ruddach and Webster.

All of which defendant is ready to prove, and pray to be hence discharged, with his reasonable costs, &c. JOHN A. WARNER.

John A. Warner, being duly affirmed, saith that the several allegations in the above answer are true, to the best of his knowledge and belief. JOHN A. WARNER.

Affirmed and subscribed before me, this 20th day of February, A. D. 1843. JOHN BINNS,
Alderman.

A.

Mess. Charles Esenwein and Co., of New York, in account with John A. Warner and Co.

1841.		Debit.	Credit.
Jan'ry 1	To balance from last year	$12,599 81	
14	cash paid Mary Esenwein	30 00	
14	By do. f. 63, 50 × n		$26 81
16	do. paid Mrs. Andrews		121 00
18	To 21 hhds. tobacco	2,124 64	
22	By cash f. 75, f. 12, 30 × n, f. 50.		60 50
22	do. f. 175		67 00
27	do. f. 60		26 40
Feb'ry 2	do. f. 40		17 60
2	do. f. 50		22 00
3	To cash received of E. & T. Poppe	6,026 31	
4	By do.		40 00
6	do. f. 200		88 00
10	To M. Rader's note, due March 27, '41	570 92	
10	premium on sales made for us, being N. Y. funds.	700 00	
11	By cash f. 2,000		862 12
11	do. pr. own draft and premium		2,080 00
17	do.		33 00
19	do. f. 112, 30 × n and premium		48 43
26	do.		20 00
March 5	do. f. 37, 30 × n		16 50
13	do.		2,000 00
13	do. C. M. Connolly's note due Aug. 3-6, 1841		2,536 31
15	To our note due August 3-6, 1841	2,536 31	
18	cash for New York draft	103 75	
23	100 hhds. Virginia leaf tobacco	10,848 03	
23	cash paid outage and porterage	134 05	
24	By cash		316 68
29	do.		20 00
30	do.		25 73
30	do.		1,720 74
April 1	To cash per New York check	2,000 00	
1	do. premium on $2,000	85 25	
3	By do.		66 00
3	do. paid Andrews & Brother		175 00
3	do. nett proceeds of Rader's note		1,361 67
3	do.		55 00
9	do.		454 23
10	do.		117 70
13	do. f. 125		52 50
13	do. nett proceeds of Collins & Rader's notes		3,346 42
	Carried over	$37,759 07	$15,777 34

Account—Continued.

1841.		Debit.	Credit.
	Amounts brought forward....	$37,759 07	$15,777 34
April 20	To 10 tobacco knives	40 00	
22	By cash f. 125		55 00
23	do. f. 50		22 00
24	do		113 80
26	do. f. 50		22 00
26	do		2,000 00
28	do. paid labels		34 00
29	do. f. 50		22 00
30	do. f. 50		22 00
May 3	do		30 00
5	To cash pr. drafts on Shultz & Bleidorn	33 30	
4	By 2 hhds. tobacco		201 70
7	15 cases seed leaf tobacco		540 71
8	To Laird's note due this date	110 25	
13	By 108 bales Kentucky leaf tobacco		596 19
13	50 bales Cuba....do....do		1,166 18
17	cash f. 50		22 00
22	do. f. 570		247 78
28	To cash paid Mary Esenwein	10 00	
28	By do		110 00
29	do. 10 bales Cuba		223 06
31	cash		1,283 88
June 2	do. pr. 2 drafts		4,080 00
9	do. f. 750 premium		324 45
10	do. received of Lazarus		26 00
12	do. pr. our drafts		2,537 50
12	To cash paid their drafts	148 98	
14	do. per our remittance in N. Y. funds	1,000 00	
14	difference in account as per account current	8 50	
14	By cash received of Lilly		238 00
16	do. f. 125		55 00
21	do. f. 110		48 40
21	do. pr. our draft		872 93
26	do. f. 25		11 00
26	do. received of A. Riegel		30 00
30	To nett proceeds of 84 boxes and 37 kegs tobacco	1,650 00	
30	do....do.....10 boxes tobacco	258 00	
30	do....do.....10..do..small lump tobacco	158 00	
30	do....do.....20..do.....do.....do	267 00	
30	do....do.....6..ladies' twist.....do	131 00	
30	do....do.....27 hhds.....do	1,773 00	
30	do....do.....26..do.....do	2,121 00	
30	do....do....19,500 Principe segars	256 00	
30	cash received of Rader	282 93	
	Amount carried forward....	$45,957 03	$30,712 92
	Amounts brought forward....	45,957 03	30,712 92
July 2	By cash		205 00
6	do. f. 113, 36 × n		50 00
6	do. $535. $175		710 00
7	do. f. 105		46 20
14	do. f. 125		55 00
14	To cash	100 00	
15	do. 44 hhds. Virginia leaf Tobacco	3,872 93	
15	By cash, $965		415 00
15	P. D. Collins' note due Oct. 25, '41		761 21
15	do.....do....Nov. 25, '41		761 23
15	do.....do....Dec. 25, '41		761 21

Account—Continued.

1841.		Debit.	Credit.
July 24	To cash paid outage and porterage	$153 75	
August 6	do. received of Poppe	3,000 00	
3	our note due November 1-4, '41	7,500 00	
3	do....do.. December 1-4, '41	7,500 00	
3	do....do.. January 1-4, '42	7,500 00	
3	do....do.. February 1-4, '42	7,500 00	
3	do....do.. March 1-4, '42	7,500 00	
6	cash received of Myer, Schoene & Co	1,415 52	
6	do. nett proceeds of Keppler's draft	982 17	
6	By cash per our draft		$1,000 00
9	do. f. 100		44 00
9	do. per our draft		1,500 00
9	To cash paid Mary Eeenwein	10 00	
11	By cash		59 20
11	do. 200 bales Kentucky leaf Tobacco		1,004 37
13	cash per our draft		2,000 00
14	234 bales Cuba and Havana leaf tobacco		4,028 44
14	To nett proceeds of 88 boxes tobacco	1,346 38	
14	our note due December 14-17, '41	1,042 67	
18	cash pr. remittance	2,063 75	
18	By cash received of Heald, Woodw'd & Co		760 06
19	100 bales Kentucky leaf tobacco		502 18
31	sundry tobaccos		4,378 29
Sept. 2	sundry notes		11,977 69
2	sundries		27,010 46
2	sundries		2,654 98
2	S. Austin's note due December 31-3, January, '42		435 47
2	transfers of Loomis & Hale's account		120 59
2	do.....J. M. Brineler's account		203 00
2	do.....D. W. Warning's account		796 85
2	do.....S. Mayer's account		1,208 99
2	do.....J. Barber & Co's account		494 15
2	do.....A. Snowhill & Son's account		1,089 75
2	do.....A. Snowhill's account		125 53
	Amount carried over....	$97,444 20	$95,871 77
	Amounts brought forward....	97,444 20	95,871 77
Sept. 2	By cash received August 14		160 00
2	To nett proceeds of tobacco	1,198 00	
2	do....do...of segars	45 70	
2	To difference in bill tobacco, Sept. 2, '41	161 69	
2	By balance		2,817 82
		$98,849 59	$98,849 59
1841.			
Sept. 2	To balance	$2,817 82	

B.

Messrs. Heald, Woodward & Co., in account with John A. Warner & Co.

1841.			Debit.	Credit.
Jan'ry	1	To balance from last year	$1,990 76	
	7	By cash		$1,409 00
	8	110 bales Cuba leaf tobacco		2,029 53
	13	To 7 boxes segars	173 80	
	14	By cash and discount		178 94
	18	5 boxes Ladies' twist tobacco		125 78
	18	To Principe and common segars	181 84	
	22	cash f. 535 and 8 p. cent	2,568 00	
	25	By 25 hogsheads Virginia leaf tobacco		2,445 18
	25	10 cases Pennsylvania leaf tobacco		482 96
	29	cash		500 00
	30	1 hogshead Virginia leaf tobacco		114 40
Feb'ry	1	cash		550 00
	2	ditto		600 00
	2	30 boxes Robinson's 16s and 32s		618 42
	4	cash		918 00
	4	5 boxes Pennsylvania leaf tobacco, January 25		109 89
	4	1 hogshead Virginia leaf tobacco		124 61
	4	5 kegs Plug tobacco		84 45
	6	5 hogsheads Kentucky leaf tobacco		548 18
	11	To cash per draft on N. Y. and premium	2,080 00	
	12	By 25 boxes Ender's 32s lumps tobacco		535 04
	13	cash		1,886 06
	13	6 hogsheads stems		52 36
	15	5 barrels snuff and 2 bales leaf		142 72
	18	cash		193 94
	18	To nett proceeds of 5 hogsheads tobacco	590 20	
	22	By 12 hogsheads Kentucky leaf tobacco		984 78
	24	To 4 hogsheads Kentucky leaf tobacco	490 40	
	25	nett proceeds of 10 hogsheads tobacco	1,013 99	
	25	By 3 boxes Enders' 16s lump tobacco		54 67
	26	To 3 boxes Robinson's 16s lump tobacco	63 60	
March	1	By 9-2 barrels and 2 kegs snuff		110 99
	4	To our note due June 8–11, 1844	1,575 12	
	4	Ditto July 6–9 do	888 20	
	4	Ditto July 12–15 do	1,141 33	
	4	Ditto July 18–21 do	1,222 59	
	4	Ditto Aug. 2–5 do	1,222 59	
	4	Ditto Aug. 13–16 do	984 78	
	4	Ditto Oct. 5–8 do	1,418 36	
		Amount carried over	$17,535 56	$14,790 90
		Amounts brought forward	$17,535 56	$14,790 90
	5	To 4 hogsheads Kentucky leaf tobacco	341 97	
	8	By 63 hogsheads Virginia leaf tobacco		6,665 62
	8	3 cases Pennsylvania leaf		67 48
	10	31 cases Pennsylvania leaf		1,241 17
	10	To 1 hogshead Kentucky and common segars	595 61	
	11	By 1 hogshead Kentucky leaf tobacco		40 48
	12	2 bales Havana leaf tobacco		213 85
	12	cash		40 00
	11	cash		595 46
	12	To transfer of Buckley's account	40 00	
	12	20,000 Cazadores segars	260 00	
	12	cash	40 48	

Account—Continued.

1841.		Debit.	Credit.
March 12	To 1 hogshead Kentucky leaf tobacco	$50 48	
13	28....do.....do	2,278 43	
13	By 18 bales Cuba tobacco		$341 25
15	1 hogshead Kentucky leaf tobacco		56 94
16	cash		50 48
17	23 hogsheads Virginia leaf tobacco		2,768 11
25	5 boxes Ladies' twist		125 02
27	cash		109 76
April 1	To 14 hogsheads Kentucky leaf tobacco	1,256 69	
1	1 hogshead.....do	85 92	
2	70 boxes 3 groce pipes	52 50	
3	cash, nett proceeds of notes	3,998 40	
5	By 21 bales Cuba		432 52
6	cash, nett proceeds of notes		3,998 40
6	50 bales Cuba leaf tobacco		748 22
6	108 boxes and kegs tobacco, March 30		1,928 43
6	To 3 kegs plug tobacco	47 10	
6	53 boxes Wade's lb. lump tobacco, March 26	693 41	
6	40 boxes Peters' lb. lump tobacco	541 40	
7	By 37 bales Cuba leaf tobacco		750 64
10	10.....do.....do		188 54
12	To 15 hogsheads Kentucky leaf tobacco	1,358 78	
15	By 10 kegs plug tobacco		156 45
20	To nett proceeds of 45 hogsheads Ky. leaf tobacco	5,408 01	
23	By 10 boxes and 5 kegs tobacco		340 90
24	To 2 boxes Robinson's 16s lump tobacco	41 70	
26	By 1 hogshead Kentucky leaf tobacco		54 94
26	20 reams paper		60 00
26	13 boxes manufactured tobacco		304 63
27	cash		902 00
28	10 half kegs plug tobacco		166 50
28	To 10,000 Principe segars	100 00	
30	cash	902 00	
	Amount carried over	$35,558 37	$37,068 69
	Amounts brought forward	35,558 37	37,068 69
May 3	By 16 boxes manufactured tobacco		349 95
4	cash		1,300 00
4	To 40,000 Principe segars	400 00	
6	cash	1,300 00	
8	By 250 empty segar boxes		35 00
11	To cash	1,020 00	
11	By 14 bales Havana leaf tobacco		1,391 65
11	10 half kegs plug tobacco		164 85
10	1 bale Havana leaf tobacco		104 00
15	To cash per Perits' note	3,872 50	
15	By cash		1,945 72
17	5 boxes plug tobacco		105 06
17	7 boxes Ladies' twist tobacco		180 12
18	39 kegs Bruce's twist tobacco		655 60
19	9 hogsheads Kentucky leaf tobacco		544 37
22	cash		3,946 78
27	19 hogsheads Kentucky leaf tobacco		1,435 72
27	11 boxes manufactured tobacco		184 09
27	8 half kegs plug tobacco		131 55
27	cash		700 00
31	To allowance on Pennsylvania tobacco	60 47	
31	our note due July 3-6, 1841	452 24	
31	Ditto Aug. 6-9, do	2,221 87	

1841.			Debit.	Credit.
May	31	To our note due Sept 8–11, 1841	$2,221 88	
	31	Ditto Oct. 8–11, do	2,221 87	
	31	Ditto July 11–14, do	1,579 44	
	31	Ditto Aug. 17–20, do	2,768 11	
	31	Ditto Nov. 30– 3 Dec., 1841	2,061 85	
	31	Ditto Aug. 10–13, do	2,240 86	
	31	Ditto Dec. 23–26, do	968 48	
	31	Ditto Jan. 10–13, 1842	799 98	
	31	Ditto Nov. 11–14, 1841	1,495 65	
	31	Ditto Jan. 18–21, 1842	655 60	
	31	Ditto Sept. 19–22, 1841	544 37	
	31	Ditto Sept. 27–30, 1841	1,435 72	
	31	Ditto Jan. 29– 1 Feb., 1842	315 64	
June	1	By cash		$33 87
	2	To cash	700 00	
	2	By 51 bales Cuba leaf tobacco		887 04
	4	10 bales St. Domingo tobacco		154 69
	4	To cash	1,100 76	
	5	By cash		1,345 76
	1	7¼ oil of bergamot		24 37
	8	To cash	245 00	
		Amount carried forward	$66,240 66	$51,688 88
		Amounts brought forward	66,240 66	51,688 88
June	12	By cash		700 00
	14	1 bale Cuba		23 50
	14	To cash	700 00	
	14	120 bales Cuba, May 31	2,382 30	
	14	sundry segars	895 84	
	15	By 2 bbls. Scotch snuff		33 39
	16	cash and disc't		2,382 30
	16	To 22 hhds. Kentucky leaf tobacco	926 07	
	17	By cash		5,000 00
	22	10 hhds. Kentucky leaf tobacco		498 55
	23	11 do. do.		740 38
	23	2 do. do.		99 05
	24	14 do. do.		633 33
	24	8 do. do. Virginia		742 55
	24	cash		926 07
	24	To cash	498 55	
	25	By 11 hhds. Kentucky and 5 hhds. Maryland		1,268 57
	28	44 kegs plug tobacco		684 03
	30	cash		1,500 00
July	6	do.		2,000 00
	14	do.		4,000 00
	1	3 boxes manufactured tobacco		75 17
	8	2 boxes Lottier's 5 plug tobacco		36 00
	14	1 box Robinson's 16s		19 18
	14	17 hhds. Ohio tobacco		862 55
	15	46 hhds. Virginia tobacco		3,856 39
	17	2 boxes Lottier's plug tobacco		35 20
	15	1 hhd. Kentucky leaf tobacco		88 68
	16	320 empty segar boxes		44 80
	16	10 boxes ladies' twist tobacco		248 71
	17	To 30 bales Cuba leaf tobacco	447 84	
Aug.	18	60 bales Havana tobacco	1,064 03	
July	19	By 5 mille principe segars		87 50
	20	6 hhds. leaf tobacco		325 25
	24	cash		447 84

Account—Continued.

1841.			Debit.	Credit.
July	27	By 10 boxes tobacco		$197 10
	28	2 boxes plug tobacco		35 84
Aug.	5	5 boxes plug tobacco		89 44
	11	cash		250 00
	13	11 hhds. tobacco		612 50
	16	15 boxes manufactured tobacco		288 34
	18	11 hhds. Kentucky leaf tobacco		763 31
	18	22½ mille principe segars		360 00
	19	49 hhds. Ohio leaf tobacco		3,196 21
	18	To interest on cash	$11 00	
		Amount carried over	$73,166 29	$84,840 61
		Amounts brought forward	73,166 29	84,840 61
Aug.	19	By 5 boxes Bonn's pound lump		129 50
	20	cash		450 00
	24	do.		2,390 98
	25	27 hhds. Kentucky leaf tobacco		2,484 61
	26	75 bales Cuba tobacco		1,048 91
	25	7 hhds. Ohio tobacco		367 56
	29	40 boxes pound lump tobacco		921 89
	30	8 half boxes 32s tobacco		106 40
Sept.	1	To 30,000 segars	330 00	
	6	sundries	22,441 52	
	6	27 hhds. Kentucky leaf tobacco	2,484 61	
	9	8,750 Cazadores segars	113 75	
	9	sundries	2,654 98	
	11	By cash		2,221 88
	11	8 boxes tobacco		174 44
	14	To cash	1,112 00	
	20	By 300 segar boxes		42 00
	20	87 hhds. Ohio tobacco		4,387 94
	21	7 hhds. Ohio tobacco		352 02
	21	To cash	500 00	
	23	By 23 boxes tobacco		505 67
	25	3 hhds. Ohio tobacco		150 74
	27	10 half kegs plug tobacco		144 34
	30	To cash	609 88	
	30	By cash		1,435 00
	28	20 boxes 16s lump tobacco		335 72
Oct.	4	To cash	1,435 00	
	5	By 2 hhds. tobacco		171 64
	8	22 boxes tobacco		447 03
	8	200 segar boxes		28 00
	15	117 bales Cuba tobacco		2,152 31
	16	3 cases seed leaf tobacco		151 34
	16	To nett proceeds of manufact'd tobacco, due Dec. 10..	1,875 11	
	16	nett proceeds of seed leaf tobacco, due Dec. 29..	3,185 00	
	18	By 233 bales Cuba tobacco		4,306 54
	19	To 53¾ mille segars	567 50	
	25	By 4 boxes manufactured tobacco		78 98
	26	1 keg Virginia twist tobacco		19 80
Nov.	2	64 hhds. Ohio leaf tobacco		3,479 14
	3	100 packages manufactured tobacco		259 93
	4	1 hhd. Maryland leaf tobacco		42 00
	4	5 boxes Lottier's 5's plug tobacco		112 07
	4	23 hhds. Ohio leaf tobacco		1,212 71
		Amounts carried over	110,475 64	114,951 00

Account—Continued.

1841.		Debit.	Credit.
	Amounts brought forward..	$110,475 64	$114,951 00
Nov. 5	By 10 boxes manufactured tobacco.....	.....	256 44
6	18 hhds. Kentucky leaf tobacco	.....	909 35
8	33-1 and 30-2 boxes tobacco.....	.....	1,260 83
6	To cash, N. Y. funds.....	1,038 25	
10	16,500 Cazadores segars.....	214 50	
11	By 1 keg twist tobacco.....	.....	18 40
12	6 hhds. and 53 bales tobacco.....	.....	526 27
17	34 kegs Jones' 10's, plug tobacco	.....	602 70
17	200 empty segar boxes.....	.....	28 00
17	9 packages manufactured tobacco.....	.....	171 83
17	error in bill, Feb'ry, sold to them.....	.....	21 56
23	To 5,000 Cazadores segars.....	65 00	
27	58,000 Principe segars	580 00	
27	By 1 bale and loose Cuba.....	.....	89 10
29	1 box Miller's fine cut.....	.....	19 19
29	charges on tobacco.....	.....	345 23
29	do. on 80 hhds. tobacco.....	.....	102 40
29	do. on 14 do. do.	.....	14 16
29	do. on 7 do. do.	.....	13 50
29	do. on 51 do. do.	.....	81 60
Dec. 1	6 boxes Robinson's 16's.....	.....	107 80
1	interest on cash.....	.....	126 10
6	To cash.....	300 00	
11	By 6 boxes Wright's pound.....	.....	99 19
11	10 cases seed.....	.....	313 82
13	To cash.....	1,980 00	
14	By 1 hhd. Kentucky leaf tobacco.....	.....	35 48
15	31 boxes tobacco.....	.....	481 13
15	cash.....	.....	2,000 00
18	To cash.....	2,042 33	
23	By 22 small boxes tobacco.....	.....	44 00
28	To 6,000 Havana Cazadores.....	120 00	
29	5,000 Cazadores segars.....	65 00	
30	By sundries.....	.....	49 35
30	do.	.....	13,738 94
30	To net proceeds of tobacco.....	595 38	
30	balance of interest.....	75 38	
30	balance in their favor.....	18,719 39	
20	10,500 segars.....	136 50	
		$136,407 37	$136,407 37
1842.			
Jan. 1	By balance in favor of Heald, Woodward & Co... E. E.	.....	$18,719 39

Further answer of Heald, Woodward and Co.

Afterwards, to wit, on the seventh day of April, A. D. one thousand eight hundred and forty-three, come William Heald, Jacob Heald, Samuel Woodward, and A. J. Bucknor, four of the defendants named in the complainant's said bill, trading as Heald, Woodward and Co., and present their further answer thereto, which, being read and filed, is in the words following, to wit:

To the honorable the judges of the circuit court of the United States, for the district of Pennsylvania, 3d circuit, in equity.

The further answer of William Heald, Jacob Heald, Samuel Woodward, and A. J. Bucknor, trading as Heald, Woodward and Co., defendants to the bill of complaint of Thomas P. Martin and Spencer Franklin, trading as Martin and Franklin, complainants.

The defendants, now and at all times, saving all exceptions for further answer to said bill of complainants, say:

That in the month of September, A. D. 1841, they purchased of John A. Warner, as before they have answered, a large quantity of goods, and among other things, two hundred and fifty-eight boxes of tobacco known by the name of Martin's tobacco, and no more; this being the whole number of boxes or half boxes of tobacco either sold or delivered by said Warner to defendants about that time, branded with the names or initials of complainants, or at all answering the description in complainants' bill, or inquired about therein; that of said tobacco there was re-delivered to said Warner before the filing of complainants' bill, or he failed to deliver, one hundred and thirty-four boxes, (as to which 134 boxes of tobacco, the said contract of sale between said Warner and these defendants was by mutual consent annulled and rescinded,) leaving in the hands of, or under the control of, these defendants at the time of filing of said bill, only one hundred and twenty-four boxes or half boxes of said tobacco, or the proceeds thereof, and which said one hundred and twenty-four boxes were branded with the name or initials of complainant, as defendants believe, though of this they have no certain knowledge. And these defendants purchased the said tobacco of said Warner about September 6th, 1841, at the following prices, to wit, one hundred and six boxes thereof of lumps 8's, 12's, 16's, being 13,676 pounds, at 12 cents per pound, viz., sixteen hundred and forty $\frac{12}{100}$ dollars; and eighteen boxes lumps 32's at 16 cents per pound, viz., two hundred and thirty $\frac{40}{100}$ dollars, making together eighteen hundred and seventy $\frac{52}{100}$ dollars ($1,870\frac{52}{100}$.)

And they further aver and repeat, that they purchased the same fairly and bona fide of said Warner, and for full value, and that they had no knowledge whatever at the time that said tobacco or any part thereof belonged to complainants, nor had they any reason to believe or know it. And further, the defendants say that the price paid by them for said tobacco is truly set forth and alleged as above, and the same was received by them and sold by said Warner to be placed by them to the credit of his account, and in part payment of, and not as security for, a debt due these defendants by said Warner, and which debt is not yet fully paid.

And these defendants after said sale, and prior to complainants' bill being filed, at divers times both paid and delivered to, and received from said Warner, large sums of money and goods, all of which were placed to the debit or credit of said Warner's account with these defendants, as the case might be, but the balance of said account was then, and has been ever since, largely in favor of these defendants.

Further defendants say, that they had not in their possession at the time of receiving the letter of the complainants, to wit, on or about the fifteenth or sixteenth day of September, A. D. 1841, or under their control, any part of said tobacco or of the proceeds thereof, save only one hundred and twenty-four boxes as aforesaid, and they have no knowledge concerning the remainder of the said tobacco, save as has been hereinbefore mentioned.

Further defendants say, that neither prior to said thirteenth day of September, A. D. 1841, nor since, had they nor any of them, any conversation whatever with complainants or any of them on the subject of said tobacco.

And further defendants say, that they have had no transactions with Chas. Esenwein and Co., relative to said tobacco, nor with said John A. Warner, or John A. Warner and Co., save as the same is alleged and set forth in their former, and this their further answer; that of said tobacco, eighteen boxes were sold by defendants on the days, and for the prices, in the annexed statement set forth, which defendants pray may be taken as part of this their answer; and the remaining one hundred and six boxes had been consigned by defendants, prior to the filing of complainants' bill, to W. H. Hopkins and Co., of New Orleans, Louisiana, with other goods to be sold on defendants' account; and the said W. H. Hopkins and Co. have recently returned account sales of said tobacco, by which it appears that the nett sales of said tobacco, without deducting exchange and guarantee, is eleven hundred and fifty dollars, and defendants annex hereto a statement of said sales, which statement defendants believe to be true in all respects.

Further defendants say, that they have never been in any manner whatever the agents of complainants relative to said tobacco; that the said complainants have occasionally consigned to them, in Philadelphia, tobacco to be sold on commission by defendants for account of complainants, but that complainants at same time were in the habit of consigning tobacco to other houses in said city for the same purposes; and these defendants were in no manner or respect whatever the agents of complainants, save only in respect of such tobacco as might occasionally have been consigned to them by complainants for sale on commission as aforesaid.

All which defendants are ready to prove, and pray to be hence discharged with their reasonable costs, &c.

SAML. WOODWARD,
ARCHIMEDES J. BUCKNOR.

Archimedes J. Bucknor and Samuel Woodward, being severally sworn, say, that the several allegations and statements above made are true, as they verily believe; those depending on their own information they believe to be true, and those on the information of others they believe to be true.

SAML. WOODWARD,
ARCHIMEDES J. BUCKNOR.

Sworn before me, P. CHRISTIAN, *Alderman*.

Replication to further answer to John A. Warner.

Afterwards, to wit, on the same day and year last aforesaid, comes Thomas P. Martin, who survived Spencer Franklin, complainant aforesaid, by his solicitor, Thomas J. Wharton, esquire, and presents his replication to the further answer of John A. Warner, which, being read and filed, is in the words following, to wit:

THOMAS P. MARTIN, a citizen of the State of Virginia, who survived Spencer Franklin, also a citizen of the State of Virginia, lately trading as Martin and Franklin, complainant,
vs.
JOHN A. WARNER, a citizen of the State of Pennsylvania, and John A. Warner and Co., (a citizen of the same State,) and William Heald, Jacob Heald, Samuel Woodward, and A. J. Bucknor, all citizens of the same State, trading as Heald, Woodward and Co., defendants.

Circuit court U. S., April, 1842, No. 2.

Replication.

The replication of Thomas P. Martin, who survived Spencer Franklin, lately trading as Martin and Franklin, complainants, to the answer, and further answer of John A. Warner, defendant.

This repliant, saving and reserving to himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer and further answer, for replication thereunto say, that he will aver, maintain, and prove the bill of complainant to be true, certain, and sufficient in the law to be answered unto, and that the said answer, and further answer of respondent, are uncertain, untrue, and insufficient to be replied to by this repliant; without this, that any other matter or thing whatsoever in the said answer and further answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by their said bill he has already prayed.

T. J. WHARTON.

April 3d, 1843.

Replication to further answer of Heald, Woodward & Co.

Afterwards, to wit, on the same day and year last aforesaid, comes the said complainant, by his solicitor, Thomas J. Wharton, esq., and presents his replication to the further answer of Heald, Woodward and Co., which, being read and filed, is in the words following, to wit:

THOMAS P. MARTIN, a citizen of the State of Virginia, who survived Spencer Franklin, also a citizen of the State of Virginia, lately trading as Martin and Franklin, complainant,
vs.
JOHN A. WARNER, a citizen of the State of Pennsylvania, John A. Warner and Co., (a citizen of the same State,) and William Heald, Jacob Heald, Samuel Woodward, and A. J. Bucknor, (all citizens of the same State) trading as Heald, Woodward and Co., defendants.

Circuit court, U. S., April, 1842. No. 2.

Replication.

The replication of Thomas P. Martin, who survived Spencer Franklin, lately trading as Martin and Franklin, complainants, to the answer and further answer of William Heald, Jacob Heald, Samuel Woodward, and A. J. Bucknor, trading as Heald, Woodward and Company, defendants.

This repliant, saving and reserving to himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer and further answer, for replication thereunto say, that he will aver, maintain, and prove the bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer and further answer of respondent are untrue, uncertain, and insufficient to be replied to by this repliant; without this, that any other matter or thing whatsoever in the said answer and further answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by their said bill he has already prayed.

T. J. WHARTON.

April 3d, 1843.

Reference to a master.

And thereupon, afterwards, to wit, on the eleventh day of April, A. D. one thousand eight hundred and forty-three, on motion of Mr. Wharton, for complainant, the court order, that the case be referred to J. A. Phillips, esquire, as master, to take testimony.

Replication.

Afterwards, to wit, on the sixth day of May, A. D. one thousand eight hundred and forty-four, on motion of Mr. Wharton for complainant, leave is granted to said complainant to file replication *nunc pro tunc*. Whereupon, this repliant, saving and reserving to himself all and all manner of exception to the manifold errors, &c., of the an-

swers of the said defendants, for replication thereunto saith, that he doth and will aver, maintain, and prove his said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answers of the said defendants are very uncertain, evasive, and insufficient in the law to be replied to by this repliant; without this, that any other matter or thing in the said answers contained, material or effectual in the law to be replied unto, and not herein or hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by said bill he has already prayed, &c.

T. J. WHARTON,
Solicitor for repliant.

Deposition of Charles M. Connolly.

Afterwards, to wit, on the seventh day of October, A. D. one thousand eight hundred and forty-six, the deposition of Charles M. Connolly is presented by the master, which being read and filed is in the words following, to wit:

MARTIN
vs. } In equity.
WARNER et al.

Circuit court, United States, eastern district of Pennsylvania, 3d circuit.

Deposition of Charles M. Connolly, a witness produced, sworn, and examined on behalf of claimant at my office, No. 56, south Sixth street, in the city of Philadelphia, on the eighth day of July, 1844.

J. A. PHILLIPS.

Charles M. Connolly, of the city of New York, tobacco commission merchant, aged thirty years and upwards, produced, sworn, and examined on the part of the complainant, deposeth as follows, to wit:

I know Charles Esenwein; I have known him some seven or eight years; I know John A. Warner, have known him about the same number of years; I know the firm of Heald, Woodward and Company; I know all the partners—they are A. J. Bucknor, Jacob Heald, Samuel Woodward; and Jacob Heald and Co., of Baltimore, are composed of Jacob and William Heald; I do not know whether both Healds belong to the firm of Heald, Woodward and Company; Charles Esenwein was the only member of the firm of C. Esenwein and Co., of New York. The members of the firm of C. Esenwein and Co. in Philadelphia, were Mr. Esenwein, Mr. Boehm, and Mr. Motz—Augustus W. Boehm and Albert H. Motz. I think it was about the 17th of August, 1841, that Mr. Esenwein left New York for Europe; his particular friends knew he was embarrassed at the time he left; by his particular friends I mean his particular business connexions. I do not know whether he made any assignment or other disposition of his estate before he left; my impression is that he did not. Mr. Esenwein had

business transactions with John A. Warner; I don't know their extent, but I know they were considerable. Mr. Warner was not in New York at the time Mr. Esenwein left for Europe; he was there shortly afterwards. I don't know the exact motive of his visit; I did not hear him say what he came on for. After Mr. Esenwein left New York, Mr. Warner made purchases of that house in that store; he got tobacco out of the store of Esenwein after Esenwein left, but I could not swear that that tobacco was there when Esenwein left New York for Europe. I do not recollect the marks or numbers of any parts or quantities of them; they were in boxes, in kegs, and in bales; it had, I presume, been shipped from Virginia to Mr. Esenwein. I have, since that occurred, heard him say whose brands they were; he mentioned various manufacturers, among the rest were Martin and Franklin; I don't recollect that he mentioned how much of it was Martin and Franklin's brand. Tobias Beehler was in New York at the time Warner got these goods. I did not see Mr. Warner getting them out; I saw Mr. Beehler getting them out. I can't say with certainty whose brands or marks were on the tobacco Beehler was assisting in getting out. On the day I saw Mr. Beehler helping to get out those goods, I did not see Mr. Warner in New York, and understood he had left that morning or the day before; they were not to my knowledge working night as well as day in getting out this tobacco; I presume I made a great many particular remarks on the subject of taking away that tobacco. I recollect making the remark that the proceedings were wrong; it was in the forenoon that I saw Beehler taking away the goods; I saw considerable quantities going out of the store; the whole appearance of the store was wrong, it was upside down, it was done in an unbusiness like manner; in other words, things were taken out harem scarem on the day succeeding the failure, or the next day after, and that I suppose occasioned the remark.

The failure took place on the 3d of September, 1841; I think I made these remarks to Mr. Beehler himself; I presume Beehler was helping the clerks of Esenwein to get out the goods; but don't know in what capacity he acted, or under whose authority; he was then engaged in business as a sugar refiner, and I suppose that may have led me to make the remark I have spoken of. I know Mr. Beehler personally; I don't now recollect if I asked him why he was removing the tobacco; I asked the clerks what they were doing, and what was the cause of all this irregularity. I asked John D. Aymar, one of the clerks; he told me that Caprano had sold those goods to John A. Warner and Co. I think Mr. Warner paid no money for those goods at that time; I do not know if he gave notes for them; I have heard him say he had regularly purchased them from Caprano. He never, to my recollection, told me what he had paid for them; he said he took them to secure his debt. Mr. Warner told me that he came on to New York to see if he could not, with the aid of friends, get the house of C. Esenwein and Co. out of its approaching difficulties, which he could not effect, and that he had bought them from Caprano, and that they were then delivering them to him. I think Mr. Warner left New York on the day that Esenwein

and Co. failed, and returned to Philadelphia, and Mr. Beehler remained in New York; I think the delivery of these goods continued some 3 or 4 days; he told me he could not effect the relief of the house, in a conversation anterior to the failure; it was in another conversation, after the failure, that he told me he had regularly bought those goods; I can't say if he said they were then delivering them or not. Mr. Esenwein was a commission merchant or factor, as well as a dealer, and this was generally known. A good many factors also buy on their own account. Mr. Esenwein had a sign up with the name of C. Esenwein and Co. as tobacco dealer, meaning one who dealt in tobacco. I think a tobacco dealer is distinct from a tobacco commission merchant; it was known, however, that Mr. Esenwein was both, and I presume this was known also to Mr. Warner. Esenwein was indebted to me at the time of his failure; I got some tobacco on account of money lent, but none of Martin and Franklin. I took no steps to secure myself my debt before Mr. Esenwein's departure. The tobacco I got was delivered to me after the failure. Mr. Beehler did not help them to give that. Immediately after Mr. Esenwein's failure I was made his assignee; an injunction was laid on the assets of the estate, and I think my lawyer put in some answer, and on Mr. Esenwein's return the whole matter was amicably arranged. I do not recollect the date of the assignment, but I think it was three or four days after these transactions. At the time the assignment was made all the *fat* was gone; Mr. Warner told me the goods he got were to pay or secure his debt; as I understood it the notes of Warner were not yet due; such is my impression. I knew Mr. Spencer Franklin, of the firm of Martin and Franklin; I knew their brand; I knew Martin and Franklin consigned tobacco to Mr. Esenwein, and that he was one of their agents in New York. It was generally and publicly known that he was their agent. I did business for Mr. Warner in New York; Storm, Dubois and Co., also did business there for him. A. Caprano was the authorized agent in New York of Mr. Esenwein, who gave him a power of attorney to act for him when he went away; he was his confidential clerk. I think Esenwein went to Europe to try and raise funds to prevent the failure of the house. I think those sales to John A. Warner and Co. were not arranged before Mr. Esenwein left. He has his books now in his own possession. Mr. Caprano has returned. Mr. Beehler was an endorser on those particular notes of Mr. Warner's. I think Mr. Beehler admitted that the goods were taken for the purpose of securing these notes of Mr. Warner's, on which he was the endorser. I think it was after the failure that the arrangement for the delivery of the tobacco to pay this debt took place. At the time I made the arrangement, I think I was aware of this transaction with Mr. Warner having taken place. I was informed of it on seeing the goods go out by Caprano and Beehler, and I urged that my debt was in the same position as theirs, and as much a debt of honor as theirs. I think I urged it to Beehler as well as Caprano. I don't recollect *were* the agreement was made with me then or subsequently. I bought it because I wanted to secure the bor-

rowed money; it was nearly the same as money to me. I should think Mr. Warner's purchase was similar to my own—a purchase to secure a preceding debt.

Cross examined by H. M. Phillips for John A. Warner.

I had a special partner, but my business was done in my own name. At the time of Esenwein's failure he was indebted to me from 40 to 50,000 dollars; a great deal of it not due, and some of it borrowed money. I cannot say, for I do not know, whether or not Esenwein owed anything to Warner that was due at the time of their failure. Before that, Warner was in the habit of making large purchases from Esenwein; I think there was a running account between them. The books show it. I think the purchases made by Warner from Caprano, after the failure, were different in appearance from those made before it. I think I did not first communicate the situation of Esenwein to Warner; he knew more about it than I did. I recollect a conversation or consultation with Warner on the morning of the failure, or evening before; I think he introduced the conversation to me; he came on for that purpose. Mr. Esenwein never, to my knowledge, made any distinction in communicating to purchasers what tobacco was his own and what was on consignment, neither in bills, or receipts, or notes; he always treated it as his own.

[I think the custom of the trade is, that when goods are advanced on, or accepted against, the commission merchant has the control of them, to sell them to the best advantage without undue sacrifice; (Mr. Wharton and Mr. Williams, for complainant, object to all within brackets. [ ])] Caprano made the sale to Warner; his name was E. Caprano.

Re-examined by counsel for complainant.

The object or foundation of this custom is to enable the commission merchant to repay his advance or meet his drafts.

CHARLES M. CONNOLLY.

Deposition taken, reduced to writing, and by the witness subscribed and sworn to, this 8th day of July, 1844, before,

J. A. PHILLIPS, *Master, &c.*

Master's report.

Afterwards, to wit, on the same day and year last aforesaid, comes J. A. Phillips, esquire, the master appointed by this court, and presents his report, with accompanying depositions, which, being read and filed, are in the words following, to wit:

and Co. failed, and returned to Philadelphia, and Mr. Beehler remained in New York; I think the delivery of these goods continued some 3 or 4 days; he told me he could not effect the relief of the house, in a conversation anterior to the failure; it was in another conversation, after the failure, that he told me he had regularly bought those goods; I can't say if he said they were then delivering them or not. Mr. Esenwein was a commission merchant or factor, as well as a dealer, and this was generally known. A good many factors also buy on their own account. Mr. Esenwein had a sign up with the name of C. Esenwein and Co. as tobacco dealer, meaning one who dealt in tobacco. I think a tobacco dealer is distinct from a tobacco commission merchant; it was known, however, that Mr. Esenwein was both, and I presume this was known also to Mr. Warner. Esenwein was indebted to me at the time of his failure; I got some tobacco on account of money lent, but none of Martin and Franklin. I took no steps to secure myself my debt before Mr. Esenwein's departure. The tobacco I got was delivered to me after the failure. Mr. Beehler did not help them to give that. Immediately after Mr. Esenwein's failure I was made his assignee; an injunction was laid on the assets of the estate, and I think my lawyer put in some answer, and on Mr. Esenwein's return the whole matter was amicably arranged. I do not recollect the date of the assignment, but I think it was three or four days after these transactions. At the time the assignment was made all the *fat* was gone; Mr. Warner told me the goods he got were to pay or secure his debt; as I understood it the notes of Warner were not yet due; such is my impression. I knew Mr. Spencer Franklin, of the firm of Martin and Franklin; I knew their brand; I knew Martin and Franklin consigned tobacco to Mr. Esenwein, and that he was one of their agents in New York. It was generally and publicly known that he was their agent. I did business for Mr. Warner in New York; Storm, Dubois and Co., also did business there for him. A. Caprano was the authorized agent in New York of Mr. Esenwein, who gave him a power of attorney to act for him when he went away; he was his confidential clerk. I think Esenwein went to Europe to try and raise funds to prevent the failure of the house. I think those sales to John A. Warner and Co. were not arranged before Mr. Esenwein left. He has his books now in his own possession. Mr. Caprano has returned. Mr. Beehler was an endorser on those particular notes of Mr. Warner's. I think Mr. Beehler admitted that the goods were taken for the purpose of securing these notes of Mr. Warner's, on which he was the endorser. I think it was after the failure that the arrangement for the delivery of the tobacco to pay this debt took place. At the time I made the arrangement, I think I was aware of this transaction with Mr. Warner having taken place. I was informed of it on seeing the goods go out by Caprano and Beehler, and I urged that my debt was in the same position as theirs, and as much a debt of honor as theirs. I think I urged it to Beehler as well as Caprano. I don't recollect *were* the agreement was made with me then or subsequently. I bought it because I wanted to secure the bor-

rowed money; it was nearly the same as money to me. I should think Mr. Warner's purchase was similar to my own—a purchase to secure a preceding debt.

Cross examined by H. M. Phillips for John A. Warner.

I had a special partner, but my business was done in my own name. At the time of Esenwein's failure he was indebted to me from 40 to 50,000 dollars; a great deal of it not due, and some of it borrowed money. I cannot say, for I do not know, whether or not Esenwein owed anything to Warner that was due at the time of their failure. Before that, Warner was in the habit of making large purchases from Esenwein; I think there was a running account between them. The books show it. I think the purchases made by Warner from Caprano, after the failure, were different in appearance from those made before it. I think I did not first communicate the situation of Esenwein to Warner; he knew more about it than I did. I recollect a conversation or consultation with Warner on the morning of the failure, or evening before; I think he introduced the conversation to me; he came on for that purpose. Mr. Esenwein never, to my knowledge, made any distinction in communicating to purchasers what tobacco was his own and what was on consignment, neither in bills, or receipts, or notes; he always treated it as his own.

[I think the custom of the trade is, that when goods are advanced on, or accepted against, the commission merchant has the control of them, to sell them to the best advantage without undue sacrifice; (Mr. Wharton and Mr. Williams, for complainant, object to all within brackets. [ ])] Caprano made the sale to Warner; his name was E. Caprano.

Re-examined by counsel for complainant.

The object or foundation of this custom is to enable the commission merchant to repay his advance or meet his drafts.

CHARLES M. CONNOLLY.

Deposition taken, reduced to writing, and by the witness subscribed and sworn to, this 8th day of July, 1844, before,

J. A. PHILLIPS, *Master, &c.*

Master's report.

Afterwards, to wit, on the same day and year last aforesaid, comes J. A. Phillips, esquire, the master appointed by this court, and presents his report, with accompanying depositions, which, being read and filed, are in the words following, to wit:

In the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit.

April session, 1842, No. 2.

MARTIN et al.
vs.
WARNER et al. } In equity.

To the honorable the judges of the circuit court aforesaid.

The master, to whom it was referred by your honorable court to take testimony in the above case, respectfully reports:

That having first duly notified the parties, he has been attended from time to time by Henry J. Williams and Thomas J. Wharton, esquires, for the plaintiff; by Henry M. Phillips and William M. Meredith, esquires, for John A. Warner, one of the defendants; and by Christopher Fallon, esquire, for Heald, Woodward and Co., the other defendants.

He proceeded in the first instance to take testimony on behalf of plaintiff, and herewith returns the same in the annexed depositions of Jacob Beck and Augustus W. Boehm, and accompanying exhibits A and B; exhibit A consisting of compared copies of letters from Spencer Franklin, and Martin and Franklin, to Heald, Woodward and Co., and exhibit B consisting of like copies of letters from Heald, Woodward and Co., to Spencer and Franklin; all the original letters were given in evidence before the auditor, the plaintiff producing the letters from Heald, Woodward and Co., and the said Heald, Woodward and Co., on call of plaintiff, producing the letters from S. Franklin, and Martin and Franklin, under protest; and the counsel for defendants objecting to the competency and sufficiency of all of said letters as evidence.

The master then proceeded to take testimony on behalf of Heald, Woodward and Co., defendants, which he herewith returns in the annexed depositions of Thomas Webster, junior, and Thomas Mullen.

All which is respectfully submitted by—

J. A. PHILLIPS,
Master, &c.

Philadelphia, January 10th, 1844.

C. C. U. S. E. D. P., April, 1842.—No. 2.

THOMAS P. MARTIN, who survived Spencer Franklin,
vs.
JOHN A. WARNER et al. } In equity.

Before J. A. Phillips, master, at his office, No. 56, south Sixth street, in the city of Philadelphia.

Monday, May 15th, 1843.

Present: Messrs. T. J. Wharton and H. J. Williams, for plaintiff; Mr. C. Fallon, for Heald, Woodward and Co.; Mr. H. M. Phillips, for John A. Warner and Co.; Mr. W. M. Meredith, on same side.

The plaintiff then called Jacob Beck, who was first sworn, and whose deposition follows in these words:

Jacob Beck sworn, called by plaintiff, testifies as follows:

I am acquainted with the firm of Charles Esenwein and Company of this place; Charles Esenwein and Co. transacted business here; I was employed as a salesman for them; there was also a firm of Charles Esenwein and Co. in New York; the firm of Charles Esenwein and Co. in Philadelphia consisted of Mr. Albert H. Motz and Mr. Augustus W. Boehm; I did not know that Mr. Esenwein had any concern in the establishment here, until the failure in New York afterwards of Charles Esenwein and Co., and I then understood from them that he had a concern in this place here; I cannot tell you who composed the firm in New York; I never heard any of them say who were the members of that firm, Charles Esenwein and Co., in New York; Mr. Charles Esenwein resided in New York; he frequently came on here; I sold him tobacco myself from the Philadelphia concern for cash, the same as I would to any body else; I had no interest in the firm of Charles Esenwein and Company, nothing but a salary; the nature of their business in both places was tobacco business; I bought and sold tobacco for them; they were commission merchants, and also purchased it on their own account; they received it on consignment; I can hardly tell how long the firm in the city existed; from the time *of* Messrs. Boehm and Motz came in, I think not more than 3 or 4 years; there had been a firm of Charles Esenwein and Company previously, and before Mr. Esenwein went to Europe, which was, may be, six years ago, and when he returned he then sold out, as I understood, to these two young men, and then commenced in New York; I was in with Charles Esenwein and Co. some years previous to that, and before those gentlemen were in; when I first knew the firm of Esenwein and Co., it was composed of Mr. Tunis, Mr. Ireland, Charles Esenwein; the original name of the firm was then Tunis, Esenwein and Co., (but afterwards was Charles Esenwein and Co.;) *Mrs.* Tunis withdrew from the concern, then Mr. Ireland did; when Esenwein went to Europe, which may have been 6 years ago, may be longer, there was no other member of the firm; the firm then was Charles Esenwein and Co., but I knew no other but Charles Esenwein.

I knew a firm here of John A. Warner and Company, and sold them tobacco; they transacted business in Philadelphia; I sold them tobacco for Charles Esenwein and Co. at different times, frequently; I do not know who composed the firm of John A. Warner and Company; when I first knew John A. Warner, it was with another person, an old German; I don't know who the firm was, but John A. Warner; the old German went out of the firm; it was John A. Warner and Co., I believe, for about eight years since the German withdrew from it; I never heard him say who composed the firm of John A. Warner and Company; I kept no books of Charles Esenwein and Co., and hardly ever looked into them, unless some customer came in to look at his account; I did the buying and selling of the concern; Mr. Vetterline was the

In the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit.

April session, 1842, No. 2.

MARTIN et al.
vs.
WARNER et al. } In equity.

To the honorable the judges of the circuit court aforesaid.

The master, to whom it was referred by your honorable court to take testimony in the above case, respectfully reports:

That having first duly notified the parties, he has been attended from time to time by Henry J. Williams and Thomas J. Wharton, esquires, for the plaintiff; by Henry M. Phillips and William M. Meredith, esquires, for John A. Warner, one of the defendants; and by Christopher Fallon, esquire, for Heald, Woodward and Co., the other defendants.

He proceeded in the first instance to take testimony on behalf of plaintiff, and herewith returns the same in the annexed depositions of Jacob Beck and Augustus W. Boehm, and accompanying exhibits A and B; exhibit A consisting of compared copies of letters from Spencer Franklin, and Martin and Franklin, to Heald, Woodward and Co., and exhibit B consisting of like copies of letters from Heald, Woodward and Co , to Spencer and Franklin; all the original letters were given in evidence before the auditor, the plaintiff producing the letters from Heald, Woodward and Co., and the said Heald, Woodward and Co., on call of plaintiff, producing the letters from S. Franklin, and Martin and Franklin, under protest; and the counsel for defendants objecting to the competency and sufficiency of all of said letters as evidence.

The master then proceeded to take testimony on behalf of Heald, Woodward and Co., defendants, which he herewith returns in the annexed depositions of Thomas Webster, junior, and Thomas Mullen.

All which is respectfully submitted by—

J. A. PHILLIPS,
Master, &c.

Philadelphia, January 10th, 1844.

C. C. U. S. E. D. P., April, 1842.—No. 2.

THOMAS P. MARTIN, who survived Spencer Franklin,
vs.
JOHN A. WARNER et al. } In equity.

Before J. A. Phillips, master, at his office, No. 56, south Sixth street, in the city of Philadelphia.

Monday, May 15th, 1843.

Present: Messrs. T. J. Wharton and H. J. Williams, for plaintiff; Mr. C. Fallon, for Heald, Woodward and Co.; Mr. H. M. Phillips, for John A. Warner and Co.; Mr. W. M. Meredith, on same side.

The plaintiff then called Jacob Beck, who was first sworn, and whose deposition follows in these words:

Jacob Beck sworn, called by plaintiff, testifies as follows:

I am acquainted with the firm of Charles Esenwein and Company of this place; Charles Esenwein and Co. transacted business here; I was employed as a salesman for them; there was also a firm of Charles Esenwein and Co. in New York; the firm of Charles Esenwein and Co. in Philadelphia consisted of Mr. Albert H. Motz and Mr. Augustus W. Boehm; I did not know that Mr. Esenwein had any concern in the establishment here, until the failure in New York afterwards of Charles Esenwein and Co., and I then understood from them that he had a concern in this place here; I cannot tell you who composed the firm in New York; I never heard any of them say who were the members of that firm, Charles Esenwein and Co., in New York; Mr. Charles Esenwein resided in New York; he frequently came on here; I sold him tobacco myself from the Philadelphia concern for cash, the same as I would to any body else; I had no interest in the firm of Charles Esenwein and Company, nothing but a salary; the nature of their business in both places was tobacco business; I bought and sold tobacco for them; they were commission merchants, and also purchased it on their own account; they received it on consignment; I can hardly tell how long the firm in the city existed; from the time *of* Messrs. Boehm and Motz came in, I think not more than 3 or 4 years; there had been a firm of Charles Esenwein and Company previously, and before Mr. Esenwein went to Europe, which was, may be, six years ago, and when he returned he then sold out, as I understood, to these two young men, and then commenced in New York; I was in with Charles Esenwein and Co. some years previous to that, and before those gentlemen were in; when I first knew the firm of Esenwein and Co., it was composed of Mr. Tunis, Mr. Ireland, Charles Esenwein; the original name of the firm was then Tunis, Esenwein and Co., (but afterwards was Charles Esenwein and Co.;) *Mrs.* Tunis withdrew from the concern, then Mr. Ireland did; when Esenwein went to Europe, which may have been 6 years ago, may be longer, there was no other member of the firm; the firm then was Charles Esenwein and Co., but I knew no other but Charles Esenwein.

I knew a firm here of John A. Warner and Company, and sold them tobacco; they transacted business in Philadelphia; I sold them tobacco for Charles Esenwein and Co. at different times, frequently; I do not know who composed the firm of John A. Warner and Company; when I first knew John A. Warner, it was with another person, an old German; I don't know who the firm was, but John A. Warner; the old German went out of the firm; it was John A. Warner and Co., I believe, for about eight years since the German withdrew from it; I never heard him say who composed the firm of John A. Warner and Company; I kept no books of Charles Esenwein and Co., and hardly ever looked into them, unless some customer came in to look at his account; I did the buying and selling of the concern; Mr. Vetterline was the

book-keeper in the years 1841 and 1842, and I believe young Mr. Boehm was there also; I do not know Mr. Boehm's first name; he is a brother of Mr. A. W. Boehm; Vetterline kept the waste book; no other clerks employed there; there was a porter, David Simpson; Mr. John A. Warner was not ever a member of the firm of Charles Esenwein and Co. that I know of; if he had *have* been, he wouldn't have been so confounded troublesome; he gave me a great deal of trouble selling to him sometimes; I do not know any thing of Mr. Esenwein's leaving here in 1841, except that he went.

The firm here became insolvent in the year 1841, I think, may be it was in the fall of the year, and made an assignment; the firm made the assignment; at that time Mr. Esenwein was in Europe; it was may be nine or ten months after he left that it was made; my sons are in the tobacco manufacturing business; the house here did business with the house in New York; I sold them tobacco; I dealt with Charles Esenwein himself; I knew Caprano was a clerk for Esenwein in New York, I have no acquaintance with him; I do not know, but believe, that when he went away he left his business in New York with Caprano; I only now say from hearsay; I suppose Esenwein was in Europe about 18 months; can't tell; I have seen letters from the firm in New York to Esenwein and Co. here, but never troubled myself much to look at them, as it was none of my business. I do not know the firm of Martin and Franklin, of Richmond, Virginia; I knew Mr. Franklin when he was here in partnership with Peter Logan; I knew there was such a firm of Martin and Franklin; I don't know who they consigned to in this city; I do know that they did not consign any to C. Esenwein and Co. here; I know not whether they consigned to C. Esenwein and Co. in New York. I knew their tobacco by its marks; the marks were made by pierced plates and a brush; they were manufacturers; they usually sent manufactured chewing tobacco, and perhaps leaf; chewing tobacco generally comes in small square boxes of from 150 to 160 lbs.; I think about the summer or fall of 1841, tobacco of that description was pretty high; there are various qualities of manufactured tobacco; considerable variety; manufactured tobacco was quoted at that time, according to its qualities, from 8 to 30 cents per lb. I can give you no clearer idea as to the price or value of this tobacco of Martin and Franklin; I do not know anything of a transaction between Mr. Warner and Esenwein and Co., in New York, relative to tobacco of Martin and Franklin, obtained by Mr. Warner, or Warner and Co., from the house in New York; he got none from our house here; we had none; did'nt keep any; they never consigned any; I am very well acquainted with Mr. Saunders, of Richmond, Virginia; I saw him there about two months ago.

Vetterline was the assignee of C. Esenwein and Co., of this city, and I believe he has their books, and all their letters and papers; I do not know who was the assignee of the concern in New York, or where their books are, or any thing about that firm.

Cross examined by Messrs. Fallon and Phillips, for defendants.

I did not say the two houses in New York and Philadelphia were distinct concerns, but Charles Esenwein had a concern in the house here; I don't know what his, Martin's, boxes usually weighed; tobacco of that kind comes in whole boxes and in half boxes, weighing from 80 to 160 lbs. gross weight; they run thereabouts, sometimes over, sometimes less; sometimes they come in ¾ boxes; sometimes the whole boxes weigh 150, and sometimes as high as upwards of 170; I believe 160 is pretty near about an average.

JACOB BECK.

Deposition taken, reduced to writing, and by the witness subscribed in my presence, this 15th day of May, 1843, before

J. A. PHILLIPS, *Master, &c.*

Augustus W. Boehm sworn, called, and examined on the part of the complainant, says as follows:

I am acquainted or was acquainted with the firm of Charles Esenwein and Company, of this place; such a firm does not now exist. I was a member of that firm; the other members were Charles Esenwein and Mr. Motz; there was a firm of the same name in New York. I do not know who composed that firm but Charles Esenwein; don't know who the other members were, I never heard him say; in the year 1841 he resided in New York; the two houses in New York and Philadelphia carried on the tobacco business both on commission and on trade. I know that both firms did a pretty large commission business, and considerable business on their own account. I was a member of the firm here from January 1, 1838, until September 4, 1841, when the concern failed, made an assignment, and the partnership was dissolved. Mr. Esenwein went to Europe, I think, in August, 1841; I mean his last departure before the dissolution of the firm; he was away less than six months, I think three months, or a little over. I did know a firm here in Philadelphia of the name of John A. Warner and Company; I do not know who composed that firm; I never heard Mr. Warner say; we had dealings with John A. Warner and Company.

John A. Warner was not interested in our concern, nor we in his; he bought tobacco from us, that's all; we have occasionally bought of him, when he had any thing we thought we could make money for. Mr. Vetterline was the book-keeper of our concern in 1841; he is here now; he was our assignee, and has the books, I believe. Mr. Esenwein left Mr. Caprano in charge of his business in New York, and gave him a power of attorney to act for him. I have heard of such a firm as Martin and Franklin, of Virginia, but do not know any thing of them. The firm here never received any tobacco from Martin and Franklin; never had any dealings with them; I have seen tobacco with the brands of Martin and Franklin; I have seen them in some of the tobacco houses here; it is brought here in boxes, and marked with letters from cut plates; it is the custom to mark them in that way, and sometimes to brand them; they

are now usually marked with plates and a brush; these brands or marks are used to distinguish one man's tobacco from another's. I do not know the character of Martin and Franklin's tobacco; this was chewing tobacco, and in lumps; in August, 1841, the price of manufactured chewing tobacco in lumps ranged from 5 cents to 40 cents per lb., as in quality. Mr. Caprano wrote from the firm in New York to the firm here during Mr. Esenwein's absence. Mr. Esenwein himself corresponded with us while he was in this country; he was the sole correspondent. I went on to New York every 3, 4, or 5 months while Mr. Esenwein was there; I there saw Mr. Esenwein, Mr. Caprano, and two or three clerks; nobody else taking part in the business of the firm. I never knew any body but Mr. Esenwein interested in the business in New York; he was understood to be the only partner of the house of C. Esenwein and Co. in New York. As to the firm here, in the first year, and I think the second year, Mr. Motz and myself each got one-fourth of the profits, and afterwards one-third; when Mr. Esenwein left this country, the firm here was not known to be insolvent; it did become insolvent after the New York concern failed; the insolvency of the firm here was caused by their lending to the concern in New York large sums of money in Mr. Esenwein's absence; it was during the month of August; before that time the balance had been rather against the Philadelphia house, that is, before Mr. Esenwein sailed for Europe; when the accounts were made up it appeared that C. Esenwein and Co. was indebted to the firm here about $28,000. I do not know that when they drew on us they gave us any other reason, except that they were hard run, and wanted the money to pay their debts; I suppose that was their reason. I was aware of Mr. Esenwein's intention to leave this country before he went, I don't know how long; when the New York house sent tobacco here for other houses, it sometimes came through our house, but most generally to the other houses the purchasers direct.

A. W. BOEHM.

(Cross examination declined.)

Deposition taken, reduced to writing, and by the witness subscribed, this 2d of June, 1843, in presence of

J. A. PHILLIPS, *Master, &c.*

(*Exhibit A*—No. 1.)

Copies of letters from S. Franklin, and Martin and Franklin, to Heald, Woodward and Co.

RICHMOND, *April 12th*, 1841.

Messrs. HEALD, WOODWARD AND CO.

GENTLEMEN: I have formed a co-partnership with Mr. Thomas P. Martin, and we are now manufacturing tobacco in all its varieties.

Mr. Martin has been head manager for P. Robinson, esq., for the last 8 or 10 years; and I think his style of management will give satisfaction.

We shall have a shipment of the very best 32's ready in about 2 weeks, which we wish to ship to you.

Please write to us on receipt of this what the best 32's are selling for in your market, and what kinds of tobacco are most saleable with you.

Your house in Baltimore and our other agents allow us to draw for two-thirds' value at 4 months on shipments.

Please say whether you are willing to do the same. Direct your letters to Martin and Franklin, which is the style of our firm.

Yours, very truly, SPENCER FRANKLIN.

No. 2.

RICHMOND, *May* 13*th*, 1841.

Messrs. HEALD, WOODWARD AND CO.

GENTLEMEN: Your much esteemed favor was duly received, and contents noted.

Herewith we hand you B. L. [for] 10 half boxes tobacco, 32's and pounds, which you will please sell as soon as possible, and we wish to know the prices in your market.

We should have sent you more 32's, but our agents sold us out in New York, and wrote for all we had on hand, and allowed us to draw for 12 cts. per lb., which is very important to us.

We shall certainly make your house our agents in Philadelphia, but we hope you will allow us to draw for 12 cents per lb. on 32's of our own brand, and 10 cents per lb. on other kinds of our best brand.

You need not insure this small lot of tobacco; please write us shortly.

We are now putting up 32's, our best brand; should like to establish it in your market.

We remain, yours, very truly, MARTIN & FRANKLIN.

P. S.—S. Franklin is much improved in health; his respects to you all. Yours, S. F.

No. 3.

RICHMOND, *June* 30*th*, 1841.

Messrs. HEALD, WOODWARD AND CO.

GENTLEMEN: Your favor of the 29th May was received, and contents noted.

Annexed we hand you B. lading for 46 boxes tobacco, a first-rate article, and hope you may be able to sell them on arrival, as we wish quick sales at all times. We think our own brand 32's ought to bring 18 cts. in your market, if any other brands bring that price, but do not limit you, as we know you will get what such are going at. On this shipment we have made a dft. on you [in] favor of Thomas and Samuel Hargrave, 4 months, for five hundred dollars, which you will please accept. We shall have another lot [of] our own brand 32's ready in a short time, which we intend shipping to your house.

Yours, truly, MARTIN & FRANKLIN.

No. 4.

RICHMOND, *July 14th*, 1841.

Messrs. HEALD, WOODWARD AND Co., *Philadelphia.*

GENTLEMEN: We have none of your favors to reply to.

Enclosed we hand you B. [of] lading for eighty-two boxes tobaccos The M. and Franklin 32's we consider a superior article, such as we think cannot fail to please, and are worth as much as any 32's. The 16 boxes pounds are rather an inferior article, such as we expect 13 to 14 cts. for. We hope to be advised of some sales soon. We have on this shipment made a dft. on you, 4 months, for eight hundred dollars, which you will please accept.

Yours, truly, MARTIN & FRANKLIN.

No. 5.

RICHMOND, *Sept. 13th*, 1841.

Messrs. HEALD, WOODWARD & Co., *Philadelphia.*

GENTLEMEN: I am just from New York, looking after our tobaccos that we had shipped on consignment to Chas. Esenwein. Mr. E. Caprano, their clerk, that holds a power of attorney from Esenwein and Co., handed me a memorandum of tobacco sold; amongst those is John Warner and Co., of Philadelphia, "sold them on the 2d September 250 boxes of our tobacco, 234 boxes branded Thomas P. Martin, and 16 boxes branded H. Wit and Son."

We have enclosed the memorandum; it is not signed; but Mr. Spear, of New York, will testify to the writing. His attorney informed one of us (Martin) that it was sold for cash, which is not likely, as the house failed on the next day; and we also observed in the assignment made in Philadelphia this Messrs. Warner and Co. are further secured in the first class made soon after. We wish to beg the favor of you to get the opinion for us of some able counsel, whether we can claim this tobacco, fraudently taken from us under the cover of a cash sale, evidently to secure themselves at our loss. We had made drafts on them, of which about $2,000 has been paid, and they have sold about half that amount to other persons, for which they had heretofore charged a guarantee commission. Any expenses you may have to pay will be cheerfully allowed, by your obedient servants,

MARTIN & FRANKLIN.

N. B. We have omitted mentioning in the event the attorney thinks as we do, you will set him about it at once, on our account, for which you will please be responsible for us.

M. & FRANKLIN.

No. 6.

RICHMOND, *Sept. 14th*, 1841.

Messrs. HEALD, WOODWARD AND Co.

GENTLEMEN: We wrote you on the 13th—yesterday—and to-day hand you bills of lading for fifty-five boxes tobacco, which we think a

first rate article, well sweetened, and neatly handled; you will on arrival report on it; if there should be any defect, we wish to have it pointed out, that we may correct it at once. We have made a draft on this shipment for 4 months for eight hundred dollars, which you will please accept. In my hurry in my letter yesterday, I neglected to send the memorandum handed us by E. Caprano, Esenwein's attorney, which we enclose you in this. In this matter we wish you to lose no time; as we are determined to go any length to obtain our tobacco, there can be no doubt of our success.

Yours, truly,

MARTIN & FRANKLIN.

P. S. We hope you have been selling for us.

No. 7.

RICHMOND, *Sept. 30th*, 1841.

Messrs. HEALD, WOODWARD and Co., *Philadelphia.*

GENTLEMEN: Your favor of the 28th was this morning received, with acc't sales of 46 boxes per Driver; 5 do. Leader, 32's, in which we are sorry to see the loss in weight so enormous. We find the difference between your weights and ours are upwards of 5 lbs. per half box. You will please look into this matter, and we think you will find our weights correct, as we this morning stripped a few boxes and weighed them; they held out in weight. We wish you to try and sell by our weights, as we are very particular to have the actual tare; though mistakes sometimes happen. We should like to have sold the 5 boxes Mits and Wall lbs., which is a very good article; also the lbs. by the sch'nr Harriet, at once. Our 16's by sch'nr Union, we think, will meet with ready sales, and hope to be advised of the sale of them very soon.

Yours, truly,

MARTIN & FRANKLIN.

Exhibit B.—No. 1.

PHILADELPHIA, *April 17th*, 1841.

Messrs. MARTIN AND FRANKLIN, *Richmond, Va.*

GENTLEMEN: Your Mr. Spencer Franklin's favor of the 12th inst. is to hand, and note his remarks.

We would be pleased to receive your tobacco, and attend to your interests in this market, provided your business is confined to one house; and in this event we will accept 10 cents per lb. on your 32's at 4 mo., and when we can see any other description of work you are putting up, or may be putting up, we will be as liberal in our advances to you as to any other manufacturer.

Good 32's are now in demand here; and if you put up a uniformly good article (such as Mr. Franklin knows will suit our sales) well sweet-

ened, and neatly managed, we can make a good business for you, and sell largely of your work in time.

Hoping the health of our friend Franklin is improving, we are, very respectfully, yours,

HEALD, WOODWARD & CO.

No. 2.

(Copy.)

PHILADELPHIA, *May 29th*, 1841.

Messrs. MARTIN AND FRANKLIN, *Richmond, Va.*

GENTLEMEN: Your favor of the 13th was received in course with B. L. for 10 half boxes tobacco, which arrived a few days since. The 32's are neat, but the leaf not very good. We sold them at 17c. The pound lumps look and taste well, but too new for present sales. Pounds are very dull at present, and, we think, will continue so for two or three months, and would not advise shipments of this size until August. The 32's and 16's lumps are more saleable, and of such recommend a good supply. Send us an article of 32's, such as friend Franklin knows will answer sales here, and we will advance 12c. per lb. on them; on 16's, 10c. per lb.; and on 12's and pounds, 8c. We name on the last a small figure, but these kinds are unsaleable, and too liable to stick.

Gratified to learn that Mr. Franklin's health has much improved, we remain, yours, truly,

HEALD, WOODWARD & CO.

No. 3.

PHILADELPHIA, *July 14th*, 1841.

Messrs. MARTIN AND FRANKLIN, (*Richmond, Va.*)

GENTLEMEN: Your favor of *of* the 30th ult. was received in course with B | L 46 half boxes 32's from Driver, and note your remarks. We yesterday received the tobacco in store, and 5 boxes sold at 17 c., at which price we hope to sell the parcel. There are a good many 32's now in market, and the very finest are retailing at 18 c. You may be assured that we will get the full value for those, or any more you may send forward. If those you expect to send soon are not quite so black, they will find more favor.

Business in both leaf and manufactured is quite dull as usual at this season.

Your draft for $500 has been duly honored.

We remain, yours, truly,

HEALD, WOODWARD & CO.

No. 4.

PHILADELPHIA, *Sept.* 1, 1841.

Messrs. MARTIN AND FRANKLIN, (*Richmond, Va.*)

GENTLEMEN: Your favor of the 14th of July was received in course

with B | L 82 boxes tobacco, and note contents, since when we have sold your previous lot of 32's at 16 and 17 cts., and a few of last parcel. The fall business is opening; we would recommend your sending forward further supply of 32's, and some of your 16's, lumps, and we will endeavor to make a good market for them. With a view to quick sales and a character for your small lumps, have them made very sweet, and neatly put up.

The market is stocked with pound lumps, and we cannot recommend further shipments at present. The small lumps we can turn to good account for you, and they should be shipped early.

Hoping our friend Franklin is improving in health,

We remain, yours, truly,

HEALD, WOODWARD & CO.

No. 5.

PHILADELPHIA, *Sept.* $\frac{15}{16}$*th*, 1841.

Mess. MARTIN AND FRANKLIN.

GENTLEMEN: Your favor of the $\frac{13}{14}$th inst. came duly to hand, and in reply thereto we proceed to give you information in relation to the tobacco sold by C. Esenwein & Co., of N. Y., to Messrs. Warner & Co. of this city.

The latter house we are told loaned to Esenwein their notes and cash to the amount of fifty thousand dollars, and something over; they were induced to make this loan in consequence of representations by Esenwein, that this amount would be sufficient to enable his house to meet all their liabilities until he could have time to get to Europe and remit home sufficient funds to return the loan. After Esenwein had left the U. S., Mr. Warner was satisfied in his own mind that he had been deceived by him, and in order to secure himself from ruin he proceeded to purchase a sufficient amount of property from the attorney left by Esenwein in charge of his business. We were pained to learn that you were among the sufferers, and that you will not in all probability be able to recover any portion of the tobacco which you state was sold to Mr. Warner, as we believe the whole matter was arranged under the advice of eminent counsel engaged by Mr. Warner both in New York and this city.

We think, therefore, that any attempt made to recover the tobacco would be attended with great expense, and in the end prove fruitless.

Very respectfully, your ob't serv'ts,

HEALD, WOODWARD & CO.

No. 6.

PHILADELPHIA, *Sep.* 28, 1841.

Messrs. MARTIN AND FRANKLIN, *Richmond, Va.*

GENTLEMEN: Herewith you will please find account sales of 46 packages tobacco received per Schr. Driver, July 12, nett proceeds to

your credit in account June 7, '42, $580.12, and sales of 10 packages received per Leader, May 21, proceeds to your credit, Jan. 29, '42, $60.39; all which we trust may be found correct and satisfactory. The lot per Harriet is all sold but 35 boxes, 16 and 17 c., and hope soon to hand you sales of this parcel.

Your favor of the 14th was duly received with B | L 55 boxes tobacco per Union, and note contents. Your draft for $800 will be duly honored. The memorandum of Mr. Caprano inclosed in yours has been handed over to Messrs. Wright and Fisher per your order.

The Union has just arrived, but not yet discharged.

We remain, very respectfully,

HEALD, WOODWARD & CO.

Sales by Heald, Woodward, & Co., of 46 packages manufactured tobacco, received per schooner Driver, July 12, 1841, and sold for account and risk of Messrs. Martin and Franklin, Richmond.

July 18.—Frishmuth & Bros.,	7	Martin & F.,	325 lumps,	616 lbs.,	17.10 m.	$104 72
Aug. 25.—James S. Moyer,	6	do	529	"	17. 8 m.	89 93
Aug 25.—Ayers & Sturley,	5	do	453	"	16½.8 m.	74 75
Aug. 30.—Frishmuth & Bros.,	28	do	2,345	"	16.10 m.	375 20
						$644 60

Charges.

Freight, $4 60; drayage, $1 38	$5 98	
Storage, $3 72; advertising, $1 50; postage, $0 46	5 68	
Coopering, labor hire, and weighing, 3 c. per package	1 38	
Fire insurance on $700, a 5 c. per $100 per month	1 05	
Marine insurance on $750, at 10 p. c., and policy $1	8 50	
Commission and guarantee on $644 60, at 6½ p. c.	41 89	
		64 48
Nett proceeds due January 7th, 1842		$580 12

E. & O. E.

PHILADELPHIA, *September 17th*, 1841.

HEALD, WOODWARD & Co., (per J. N. Sanet.)

Sales of 10 packages manufactured tobacco, by Heald, Woodward & Co., received per schooner Leader, May 21, 1841, and sold, by order, for account and risk of Messrs. Martin and Franklin, Richmond.

1841.—May 26.—John A. Warner & Co., 5 Martin & F. 32's lumps, 430, 17.8 m. $73 10
" Sept. 17.—On hand 5 Miles & Walls, lbs.

Charges.

Freight, $1 25; drayage, $0 30; storage, $0 75; advertising, $1 50; postage 46-100	$4 26	
Coopering, labor, and weighing, $0 30; fire insurance on $200, at 5 c. per $100 per m., $0 40; marine insurance on $200, at 10 p. c. and $1 p., $3	3 70	
Commission and guarantee on $73 10, at 6½ per c.	4 75	
		12 71
Nett proceeds due January 29th, 1842		$60 39

E. & O. E.

PHILADELPHIA, *September 17th*, 1841.

HEALD, WOODWARD & Co, (per ———.)

No. 7.

PHILADELPHIA, *October* 27, 1841.

Messrs. MARTIN AND FRANKLIN, *Richmond, Va.*

GENTLEMEN: Your favor of the 30th ult. was received in course, and note contents. The loss in weight referred to was owing, probably, from a want of care in weighing the boxes in the factory. Tobacco, after being in store some time, loses from 1 to 3 lbs. per box; and in selling it becomes necessary for us to strip the cases off, and give the actual tare. In weighing your 32's, we found one box to weigh 1 lb. over marked tare, and another 2 lbs., which we have allowed in some cases, but in small sales the marked tare.

We now wait on you with account sales of 82 boxes tobacco, received per schooner Harriet, July 26. Nett pro. to your credit in account June 20, 1842, $813 98, carrying the 16 boxes Hill and Wert lbs. to new account.

Some of your 16's lumps have been sold at 14 c. and 15 c., and hope ere long to dispose of the balance.

It would be available to ship forward some more of your 32's, which we think will continue to command 16 cents, on which, if you desire, you can draw $10 per box.

We remain, very respectfully,

HEALD, WOODWARD & CO., (per &c.)

(*Fallon.*)

"Sales by Heald, Woodward and Co. of 82 boxes manufactured tobacco, received per schooner Harriet, July 26, 1841, and sold per account and risk of Messrs. Martin and Franklin."

Total Dr. - - - - - - - - -	$911 46
Charges - - - - - - - - -	97 48
Nett proceeds due June 20, 1842 - - -	$813 98

PHILADELPHIA, *October* 27, 1841.

HEALD, WOODWARD & CO.,
(Per D. C. M. Comma.)

Depositions taken on behalf of Heald, Woodward and Co.

Thomas Webster, jr., sworn, examined on behalf of Heald, Woodward and Co.—I am one of the firm of Ruddach and Webster, a tobacco commission house of this city. I was acquainted with the house of Martin and Franklin during the existence of that firm, and we have sold tobacco on commission for them—tobacco consigned by them to us. We have received three consignments from them, the first in November, 1841, the last in January, 1842.

Mr. Wharton declines cross examination.

THOMAS WEBSTER, JR.

Deposition taken, reduced to writing, and subscribed by witness in my presence, this 3d day of November, 1843.

J. A. PHILLIPS, *Master, &c.*

Thomas Mullen, sworn, examined on behalf of Heald, Woodward and Co.

I am one of the firm of A. Mullen and Son. We sell manufactured tobacco on commission, and our house is established in Philadelphia. I am not acquainted with Martin and Franklin; I am acquainted with Mr. Martin. We have never received any consignments from Martin and Franklin, but have from the house of Malone and Martin, of which Mr. Martin is a partner.

Cross examined by Mr. Wharton.

The first consignment from Malone and Martin was in the beginning of 1842.

THOS. MULLEN.

Deposition taken, reduced to writing, and by the witness subscribed, this 3d day of November, 1843, in presence of

J. A. PHILLIPS, *Master, &c.*

Order of reference.

Afterwards, to wit, on the twenty-eighth day of September, A. D. one thousand eight hundred and forty-seven, on motion of Mr. Wharton, for complainant, the court refer this case to J. A. Phillips, esquire, as master, to take further testimony, &c.

Leave granted to defendants to file further answers.

Afterwards, to wit, on the same day and year last aforesaid, on motion of Messrs. Fallon and Phillips, leave is granted by the court to the defendants to file further answers on or before the first Monday of November next.

Commissioner appointed.

Afterwards, to wit, on the eleventh day of October, A. D. one thousand eight hundred and forty-seven, the court appoint H. Wharton Griffith, esquire, of New York, a commissioner to take depositions, under interrogatories filed, or to be filed, in this case.

Rule for commission to New York.

Afterwards, to wit, on the fourteenth day of October, A. D. one thousand eight hundred and forty-seven, the court grant a rule for a commission to New York.

Interrogatories e. p. complainant for commission to New York.

Afterwards, to wit, on the same day and year last aforesaid, comes the complainant, by his solicitor, and presents interrogatories on his

part, for the commission to New York, which, being read and filed, are in the words following, to wit:

C. C. U. S. April Sess., 1842—2.

THOMAS P. MARTIN, who survived Spencer Franklin, trading, &c., vs. JOHN A. WARNER and Heald, Woodward and Co. } In equity.

Interrogatories to be exhibited to witness, to be produced, sworn or affirmed, and examined on the part of the complainant in this cause.

1. Do you know the parties, complainant and respondents, in this cause, or either and which of them, and how long have you known them or either of them?

2. Did or did not the firm of Martin and Franklin, of Richmond, (Va.,) ship or consign to Charles Esenwein or Charles Esenwein and Co., of New York, in the months of April, May, June, and July, 1841, for sale on the account of the said Martin and Franklin, certain quantities of manufactured tobacco, of the kind or quality called "chewing tobacco;" if yea, please to state and set forth whether such tobacco, if any, was received by or delivered to the said Esenwein, or Esenwein and Co.; when the same was received; whether the same was contained in boxes or otherwise; what was the number of boxes received, and their weight respectively; by what numbers or other terms of description the same were known or designated; and how or in what name or names such boxes were branded or marked; and if you have any statement or account of any tobacco so shipped and received, designating the marks, numbers, and weight or description of such tobacco, please to annex the same to your answer, and verify or authenticate the same; and state whence such account or statement has been taken or derived; and whether the same is an accurate account or statement of such tobacco, to the best of your knowledge and belief.

3. If you state that any such tobacco as is mentioned in the preceding interrogatory was received by Charles Esenwein, or Charles Esenwein and Co. in New York, please to state whether the same or some part thereof was in the store or stores, or possession, of the said Esenwein, or Esenwein and Co., at the end of August, and beginning of September, A. D. 1841.

4. Look at the paper writing hereunto annexed; does the same contain an accurate statement and account, or otherwise, of tobacco consigned by Martin and Franklin, of Richmond, (Va.,) to Charles Esenwein, or Charles Esenwein and Co.; and if you have the means or opportunity compare it with the books of the said Esenwein, or Esenwein and Co., or other authentic documents, and state whether or not the said paper corresponds with such books and documents, and if not, in what respects it is inaccurate.

T. J. WHARTON,
For complainant.

Oct. 12th, 1847.

Copy of paper referred to in the 4th interrogatory.

A statement of shipments made to Chas. Esenwein and Co.

April 20, [90] boxes tobacco per schr. Manchester, viz:
36 do 8s. No. 254 to 289 = 5189 lbs. nett. } Branded
34 do 16s. do 290 to 323 = 4851 do } Thomas P. Martin.
20 do 32s. do 324 to 343 = 2860 do

May 25, [62] boxes tobacco per schr. Lynchburg, viz:
26 do long 16s. No. 516 to 541 = 3760 lbs. nett. } Branded
20 do do 12s. No. 480 to 499 = 2905 do } Thos. P. Martin.
16 do do 16s. do 500 to 516 = 1591 lbs. do } Branded H. Wit and Son.

June 12, [64] boxes tobacco per schr. Manchester, viz:
8 do long 16s. No. 544 to 551 = 1147 lbs. nett. } Branded
56 do do 32s. do 552 to 607 = 5094 do } Thos. P. Martin.

July 2, [28] half boxes tobacco per schr. Leontine, viz:
28 do do 32s. No. 753 to 780 = 2539 lbs. nett.

July 28, [2 boxes and 76 half boxes] tobacco per schr. Waymouth, viz:
2 boxes and 76 half boxes 32s. No. 866 to 943 = 7181 lbs. nett.

Cross interrogatories e. p. defendants.

Afterwards, to wit, on the twenty-second day of October, A. D. 1847, come the defendants, by their solicitors, and present cross interrogatories on their part, for the commission to New York, which, being read and filed, are in the words following to wit:

C. C. U. S. April Sess., 1842—No. 2.

THOMAS P. MARTIN, who survived Spencer Franklin, trading, &c., vs. JOHN A. WARNER, et al. } In equity.

Cross interrogatories of defendant Warner, to be administered to the witnesses examined on behalf of the complainants in this case.

1. What is your present occupation, and where do you reside; what was your occupation, and where did you reside, in August, September, and October, 1841; and at any other period of time at which the circumstances stated in your testimony respectively occurred?

2. Was not Charles Esenwein, or the firm of Charles Esenwein and Co., in the summer and fall of 1841, engaged in the purchase and sale of tobacco, manufactured and otherwise; state all your knowledge herein, the extent of their dealings, the standing of their house, its positive and comparative position as dealers in the article of tobacco; was or was not a large part of their business, and if any, how much, done on their own account, and not as consignee for any other person?

3. Did not the said Charles Esenwein, or the said firm, receive at the period spoken of, tobacco shipped or consigned to him for his or their own account; to what extent had the said firm, or the said Esenwein, such dealings?

4. Did or did not the complainant, Thomas P. Martin, and his part-

ner, Spencer Franklin, or one of them, know that the said Esenwein, and the said Esenwein and Co., were engaged in the business of purchasing and selling tobacco? State all your knowledge herein.

5. Was or was not the said Esenwein, or the said Esenwein and Co., in September, 1841, or thereabouts, largely indebted to Charles M. Connolly, of New York? If so, in what sum, and how, and when did said indebtedness arise? Was any part for any tobacco owned by said Esenwein, or said Esenwein and Co., and sold for his or their own account? If so, was any of it tobacco manufactured by, or received from complainants? State all your knowledge herein.

6 Did or did not a settlement of accounts and indebtedness take place between said Connolly and said Esenwein, or said Esenwein and Co.? If so, when; on what terms; state fully its character and particulars? Did any tobacco manufactured by, or received from, the complainants, pass from one to the other? State fully your knowledge herein.

7. If in answer to the sixth cross interrogatory you state that Connolly did deliver or return to said Esenwein, or said Esenwein and Co., any tobacco that had been manufactured by, or received from, complainants, state what became of the said tobacco; was it sold? If so, by whom; and what became of its proceeds; did they in any particular thereof go to the complainant in this case? If so, state when, and how much, and annex hereto a particular account of the tobacco, its sales, the payment of its proceeds, and copies of all receipts, or other papers relating thereto.

8. Has the said Esenwein, or the said Esenwein and Co., had any settlement with the said complainant since the first day of September, 1841? If so, state the particulars of such; annex hereto copies of all papers relating thereto, especially letters, receipts, releases, or other papers, written or signed by the complainant, or on his behalf.

9. Has or has not the said complainant made with the said Esenwein, or the said Esenwein and Co., a definite arrangement of all matters in account between them? If so, state the same fully, and annex hereto copies of any papers relating thereto.

10. State particularly what became of each package or box described or referred to in the statement annexed to the complainant's fourth interrogatory; also the complainant's knowledge thereof.

HENRY M. PHILLIPS,
MEREDITH,
Attorneys for Warner.

THOMAS P. MARTIN, who survived Spencer Franklin, trading, &c.,
vs.
JOHN A. WARNER et al.
} No. 2—In equity.

Circuit court of the United States, April session, 1842.

Cross interrogatories of defendants Heald, Woodward and Co., to be

Copy of paper referred to in the 4th interrogatory.

A statement of shipments made to Chas. Esenwein and Co.

April 20, [90] boxes tobacco per schr. Manchester, viz:
36 do 8s. No. 254 to 289 = 5189 lbs. nett. } Branded
34 do 16s. do 290 to 323 = 4851 do } Thomas P. Martin.
20 do 32s. do 324 to 343 = 2860 do }

May 25, [62] boxes tobacco per schr. Lynchburg, viz:
26 do long 16s. No. 516 to 541 = 3760 lbs. nett. } Branded
20 do do 12s. No. 480 to 499 = 2905 do } Thos. P. Martin.
16 do do 16s. do 500 to 516 = 1591 lbs. do } Branded H. Wit and Son.

June 12, [64] boxes tobacco per schr. Manchester, viz:
8 do long 16s. No. 544 to 551 = 1147 lbs. nett. } Branded
56 do do 32s. do 552 to 607 = 5094 do } Thos. P. Martin.

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July 28, [2 boxes and 76 half boxes] tobacco per schr. Waymouth, viz:
2 boxes and 76 half boxes 32s. No. 866 to 943 = 7181 lbs. nett.

Cross interrogatories e. p. defendants.

Afterwards, to wit, on the twenty-second day of October, A. D. 1847, come the defendants, by their solicitors, and present cross interrogatories on their part, for the commission to New York, which, being read and filed, are in the words following to wit:

C. C. U. S. April Sess., 1842—No. 2.

THOMAS P. MARTIN, who survived Spencer Franklin, trading, &c., vs. JOHN A. WARNER, et al. } In equity.

Cross interrogatories of defendant Warner, to be administered to the witnesses examined on behalf of the complainants in this case.

1. What is your present occupation, and where do you reside; what was your occupation, and where did you reside, in August, September, and October, 1841; and at any other period of time at which the circumstances stated in your testimony respectively occurred?

2. Was not Charles Esenwein, or the firm of Charles Esenwein and Co., in the summer and fall of 1841, engaged in the purchase and sale of tobacco, manufactured and otherwise; state all your knowledge herein, the extent of their dealings, the standing of their house, its positive and comparative position as dealers in the article of tobacco; was or was not a large part of their business, and if any, how much, done on their own account, and not as consignee for any other person?

3. Did not the said Charles Esenwein, or the said firm, receive at the period spoken of, tobacco shipped or consigned to him for his or their own account; to what extent had the said firm, or the said Esenwein, such dealings?

4. Did or did not the complainant, Thomas P. Martin, and his part-

ner, Spencer Franklin, or one of them, know that the said Esenwein, and the said Esenwein and Co., were engaged in the business of purchasing and selling tobacco? State all your knowledge herein.

5. Was or was not the said Esenwein, or the said Esenwein and Co., in September, 1841, or thereabouts, largely indebted to Charles M. Connolly, of New York? If so, in what sum, and how, and when did said indebtedness arise? Was any part for any tobacco owned by said Esenwein, or said Esenwein and Co., and sold for his or their own account? If so, was any of it tobacco manufactured by, or received from complainants? State all your knowledge herein.

6 Did or did not a settlement of accounts and indebtedness take place between said Connolly and said Esenwein, or said Esenwein and Co.? If so, when; on what terms; state fully its character and particulars? Did any tobacco manufactured by, or received from, the complainants, pass from one to the other? State fully your knowledge herein.

7. If in answer to the sixth cross interrogatory you state that Connolly did deliver or return to said Esenwein, or said Esenwein and Co., any tobacco that had been manufactured by, or received from, complainants, state what became of the said tobacco; was it sold? If so, by whom; and what became of its proceeds; did they in any particular thereof go to the complainant in this case? If so, state when, and how much, and annex hereto a particular account of the tobacco, its sales, the payment of its proceeds, and copies of all receipts, or other papers relating thereto.

8. Has the said Esenwein, or the said Esenwein and Co., had any settlement with the said complainant since the first day of September, 1841? If so, state the particulars of such; annex hereto copies of all papers relating thereto, especially letters, receipts, releases, or other papers, written or signed by the complainant, or on his behalf.

9. Has or has not the said complainant made with the said Esenwein, or the said Esenwein and Co., a definite arrangement of all matters in account between them? If so, state the same fully, and annex hereto copies of any papers relating thereto.

10. State particularly what became of each package or box described or referred to in the statement annexed to the complainant's fourth interrogatory; also the complainant's knowledge thereof.

HENRY M. PHILLIPS,
MEREDITH,
Attorneys for Warner.

THOMAS P. MARTIN, who survived Spencer Franklin, trading, &c.,
vs.
JOHN A. WARNER et al.
} No. 2—In equity.

Circuit court of the United States, April session, 1842.

Cross interrogatories of defendants Heald, Woodward and Co., to be

administered to the witnesses examined on behalf of the complainants in this case.

First. What is your present occupation, and where do you reside; what was your occupation and where did you reside in August, September, and October, 1841? And at any other period of time at which the circumstances stated in your testimony respectively occurred.

Second. Was not Charles Esenwein, or the firm of Charles Esenwein and Co., in the summer and fall of 1841, engaged in the purchase and sale of tobacco, manufactured and otherwise? State all your knowledge herein, the extent of their dealings, the standing of the house, its positive and comparative position as dealers in the article of tobacco. Was or was not a large part of their business, and if any, how much, done on their own account, and not as consignee for any other person?

Third. Did not the said Charles Esenwein, or the said firm, receive at the period spoken of tobacco shipped or consigned to him for his or their own account? To what extent had the said firm, or the said Esenwein, such dealings?

Fourth. Did or did not the complainant, Thomas P. Martin, and his partner, Spencer Franklin, or one of them, know that the said Esenwein, and the said Esenwein and Co., were engaged in the business of purchasing and selling tobacco? State all your knowledge herein.

Fifth. Was or was not the said Esenwein, and the said Esenwein and Co., in September, 1841, or thereabouts, largely indebted to Charles M. Connolly, of New York; if so, in what sum, and how, and when did said indebtedness arise; was any part for any tobacco owned by said Esenwein, or said Esenwein and Co., and sold for his or their own account? If so, was any of it tobacco manufactured by, or received from, complainants? State all your knowledge herein.

Sixth. Did or did not a settlement of accounts and indebtedness take place between said Connolly and said Esenwein, or Esenwein and Co.; if so, when; on what terms? State fully its character and particulars. Did any tobacco manufactured by, or received from, the complainant pass from one to the other? State fully your knowledge herein.

Seventh. If, in answer to the sixth cross interrogatory you state that Connolly did deliver or return to said Esenwein, or said Esenwein and Company, any tobacco that had been manufactured by or received from complainant, state what became of said tobacco, was it sold; if so, by whom, and what became of the proceeds; did they or any portion thereof go to the complainant in this case? If so, state when, and how much, and annex to your answer hereto a particular account of the tobacco, its sales, the payment of its proceeds, and copies of all receipts or other papers relating thereto.

Eighth. Has the said Esenwein, or the said Esenwein and Co., had any settlement with the said complainant since the first day of September, 1841? If so, state the particulars of such; annex hereto copies of all papers relating thereto, especially receipts, releases, or other papers, written or signed by the complainant, or on his behalf.

Ninth. Has or has not the said complainant made with the said Esenwein, or the said Esenwein and Co., a definite arrangement of all matters in account between them? If so, state the same fully, and annex hereto copies of any papers relating thereto.

Tenth. State particularly what became of each package or box described or referred to in the statement annexed to the complainant's fourth interrogatory, also the complainant's knowledge thereof.

Eleventh. Has any account been exhibited or rendered to complainant by said Esenwein, or said Esenwein and Co., of the dealings between them anterior and up to the 4th day of September, 1841? If so, state the same fully, and annex hereto a copy of said account; state also if the balance there appearing has been since paid, and how, and when?

Twelfth. Did any arrangement take place between said complainant and said Esenwein, or said Esenwein and Co., during the year 1842, or at any other time since 1841; if so, what and when? Did a receipt pass from one to the other? If so, annex hereto a copy of the same, and of all accounts, memoranda, and other papers relating to the said transaction. State, also, if the money there appearing due has since been paid; and if so, to whom, and how, and when.

Thirteenth. Have the said Esenwein, or Esenwein and Co., had any dealings or transactions with said complainant since the 4th September, 1841; if aye, what dealings or transactions? State the same fully and at large, and annex to your answer hereto a copy or copies of all letters, receipts, invoices, accounts, memoranda and other papers rendered, furnished, or exhibited by either party relating to said transactions and dealings.

Fourteenth. Do you know any other matter or thing material or favorable to the defendants Heald, Woodward and Co.? If aye, please state the same fully and at large, as though you were particularly interrogated thereto.

FALLON,
For Heald, Woodward and Co.

Further answer of John A. Warner.

Afterwards, to wit, on the first day of November, A. D. 1847, comes John A. Warner, one of the defendants, and presents his further answer to complainant's said bill, which, being read and filed, is in the words following, to wit:

To the honorable the judges of the circuit court of the United States of America, for the eastern district of Pennsylvania.

The further answer of John A. Warner to the bill of complaint of Thomas P. Martin, who survived Spencer Franklin, lately trading as Martin and Franklin.

The defendant, now and at all times, saving all exceptions, &c., for further answer to the bill of complaint, (by leave of court for that pur-

pose had) says: That since the making of the former answers by this defendant in this case, he has learned, and been informed, and believes, the following which he states in answer: the accounts of dealings between the said Martin and Franklin, and the said Charles Esenwein and Co., up to and on the fourth day of September, 1841, left the said complainant's firm of Martin and Franklin indebted to the said Esenwein and Co. in the sum of $649 67, agreeably to the account hereto annexed, marked A, and the said accounts were according to the usual course of dealings between the said firms. And the defendant further answering says, that in the month of June, 1842, the said complainant had and made a settlement with said Esenwein and Co. of the business then before had and existing between them, and upon the said settlement the said Esenwein and Co. were indebted to the said complainant in the sum of $415, which sum, less a conceded discount of seven dollars twenty-seven cents, was then and there paid to said complainant, who then and there executed and delivered to said Esenwein and Co. a receipt therefor, as being in full for nett proceeds of complainant's tobacco on hand on September 4th, 1841, and sold by said Esenwein on 31 December, 1841; and this defendant believes and states, that a portion of the tobacco thus paid for had been sold by said Esenwein and Co. to one Charles M. Conolly, prior to, or about said 4th September, 1841, and was by the said Conolly redelivered to said Esenwein before the said December 31, 1841, though under what particular circumstances this defendant does not know, and craves leave to make proof thereof. And the defendant insists upon all matters of defence herein contained by way of answer, and asks leave to have the same benefit as if he had pleaded the same, and every part thereof, in bar. And he prays to be hence dismissed, &c.

JOHN A. WARNER,
HENRY M. PHILLIPS,
MEREDITH,
Of counsel for Warner.

John A. Warner, being duly affirmed according to law, says that the foregoing answer is just and true in point of fact.

JOHN A. WARNER.

Affirmed and subscribed this 30th day of October, 1847, before me—

GEORGE ERETY,
Alderman.

A.

Messrs. Martin and Franklin, in account with Chas. Esenwein & Co., up to September 4th, '41.

	Dr.	m. d.	Interest.	
1841.				
Apr. 26	To cash paid, June, $2,000 per Manchester	4 8	30	$12 25
May 6	their draft dated April 22, at 4 mo., due Aug. 25	9	2 19	1,250 00
29	cash paid, June, $1,300, per Lynchburg	3 5	14	7 25
June 2	their draft dated May 27, at 4 mo., due Sep. 30	26	4 05	800 00
15	" " June 12, at 4 " " Oct. 15	1 11	5 57	700 00
15	cash paid insurance, $1,100, per Manchester	2 19	9	6 75
July 6	cash paid insurance, $450, per Leontine	1 28	3	3 50
9	their draft dated July 3, at 4 months, Nov. 6	2 28	3 61	300 00
31	cash paid insurance, $1,300, per Weymouth	1 4	6	7 75
Aug. 11	balance from Sp. Franklin, June 1	3 4	12 74	697 10
11	their draft dated July 29, at 4 mo., Dec. 2	2 28	14 55	850 00
Sept. 4	received interest for credit side		184 30	
4	balance of interest			172 07
			$199 85	$4,806 67
1841.				
Sept. 4	To balance due to day			$649 67

A.

	Cr.	m. d.	Interest.	
1841.				
Sept. 4	By nett amount sales 160|1 and 162|2 boxes tobacco, due April 22	7 18	184 30	4,157 00
4	interest from debit side		27 78	
4	balancing interest		172 07	
4	balance			649 67
			$199 85	$4,806 67

Exceptions to cross interrogatories.

Afterwards, to wit, on the sixth day of November, A. D. 1847, comes the complainant, by his solicitors, and presents exceptions to certain cross interrogatories, filed on behalf of the defendants, sur commission to New York; which, being read and filed, are in the words following, to wit:

MARTIN
vs.
WARNER and al. } In equity.

Circuit court, U. S., April sess., 1842.—No. 2.

The complainant in the above case excepts or demurs to the cross interrogatories marked 2, 3, 4, 5, 6, 7, 8, 9, and 10, filed on behalf of John A. Warner, one of the respondents, because the same are irrelevant, and require the witness or witnesses to testify to matters not interrogated to by the interrogatories in chief.

T. J. WHARTON,
WILLIAMS,
For complainant.

November 5th, 1847.

MARTIN,
vs.
WARNER and HEALD,
WOODWARD and Co. } In equity.

Circuit court, U. S., April session, 1842.—No. 2.

The complainant in the above case excepts or demurs to the cross interrogatories marked 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13, filed on behalf of the respondents, Heald, Woodward and Co.; because the same are irrelevant, and require the witness or witnesses to testify to matters not interrogated to by the interrogatories in chief.

The complainant excepts or demurs to the cross interrogatory marked 14, filed on behalf of the same respondents; because the said interrogatory is not in conformity with the form prescribed by the LXXIst of the rules of practice for the courts of equity of the United States.

T. J. WHARTON,
WILLIAMS,
For complainant.

November 5th, 1847.

Cross interrogatory substituted.

Afterwards, to wit, on the fifteenth day of November, A. D. one thousand eight hundred and forty-seven, by leave of the court, Heald, Woodward and Co., by their counsel, withdraw the 14th or last cross interrogatory on their behalf, and substitute therefor, under the 71st rule of court, the following cross interrogatory:

Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

FALLON,
For Heald, Woodward and Co.

Nov. 15, 1847.

Time for defendants to file answer extended.

Afterwards, to wit, on the same day and year last aforesaid, the court extend the time given to defendants to file further answer, plea, or demurrer, so far as respects Heald, Woodward and Co., to November 22, 1847.

Defendant's joinder in the commission.

Afterwards, to wit, on the twenty-second day of November, A. D. one thousand eight hundred and forty-seven, come the defendants, by their solicitor, and join in commission to New York, and present interrogatories, which, being read and filed, are in the words following, to wit:

THOMAS P. MARTIN, who, &c., vs. JOHN A. WARNER et al. } In equity.

Circuit court, U. S., April sessions, 1842.

The defendants, John A. Warner, and William Heald, Jacob Heald, and Archimedes J. Bucknor, who survived Samuel Woodward, late trading as Heald, Woodward and Co., join in the commission with the plaintiff, and file the following interrogatories:

First. What is your present occupation, and where do you reside? What was your occupation, and where did you reside, in August, September, and October, 1841? And at any other period of the time at which the circumstances stated in your testimony respectively occurred.

Second. Was not Charles Esenwein, or the firm of Esenwein and Co., in the summer and fall of 1841, engaged in the purchase and sale of tobacco, manufactured and otherwise? State all your knowledge herein, the extent of their dealings, the standing of the house, its positive and comparative position as dealers in the article of tobacco. Was or was not a large part of their business, and if any, how much, done on their own account, and not as consignee for any other person?

Third. Did not the said Charles Esenwein, or the said firm, receive at the period spoken of, tobacco shipped or consigned to him or them, for his or their own account? To what extent had the said firm of the said Esenwein such dealings?

Fourth. Did or did not the complainants, Thomas P. Martin, and his partner, Spencer Franklin, or one of them, know that the said Esenwein and Co. were engaged in the business of purchasing and selling tobacco? State all your knowledge herein.

Fifth. Was or was not the said Esenwein, or the said Esenwein and Co., in September, 1841, or thereabouts, largely indebted to Charles M. Connolly, of New York? If so, in what sum, and how and when did the said indebtedness arise? Was any part for any tobacco owned by said Esenwein, or said Esenwein and Co., and sold for his or their own account? If so, was any of it tobacco manufactured by or received from complainants? State all your knowledge herein.

Sixth. Did or did not a settlement of account and indebtedness take place between said Connolly and said Esenwein, or Esenwein and Co.? If so, when; on what terms? State fully its character and particulars. Did any tobacco manufactured by, or received from, the complainants pass from one to the other? State fully your knowledge herein.

Seventh. If in answer to the sixth cross interrogatory you state that said Connolly did deliver or return to said Esenwein, or said Esenwein and Co., any tobacco that had been manufactured by, or received from complainant, state what became of the said tobacco. Was it sold; if yea, by whom, and what became of its proceeds? Did they or any portion thereof go to the complainant in this case? If so, state when, and how much, and annex hereto a particular account of the tobacco, its sales and payment of its proceeds, and copies of all receipts and other papers relating thereto.

Eighth. Has the said Esenwein, or the said Esenwein and Co., had any settlement with the said complainant since the first day of September, 1841? If yea, state the particulars of such settlement, and annex hereto copies of all papers relating thereto, especially receipts, releases, or other papers written or signed by the complainant, or on his behalf.

Ninth. Has or has not the said complainant made with the said Esenwein, or the said Esenwein and Co., a definite arrangement of all the matters in account between them? If so, state the same fully, and annex hereto copies of any papers relating thereto.

Tenth. State particularly what became of each package or box described or referred to in the statement annexed to the complainant's fourth interrogatory. Also the complainant's knowledge thereof.

Eleventh. Has any account been exhibited or rendered to complainant by said Esenwein, or said Esenwein and Co., of the dealings between them, anterior and up to the 4th day of September, 1841? If so, state the same fully, and annex hereto a copy of said account. State also if the balance there appearing has been since paid, and how and when?

Twelfth. Did any arrangement take place between said complainant and said Esenwein, or said Esenwein and Co., during the year 1842, or at any time since 1841; if so, what and when? Did a receipt pass from one to the other? If so, annex hereto a copy of the same, and of all accounts, memoranda, and other papers relating to the said transaction. State also if the money there appearing due has been since paid; and if so, to whom, and how, and when.

Thirteenth. Has the said Esenwein, or Esenwein and Co., had any dealings or transactions with said complainants since the 4th September, 1841; if aye, what dealings or transactions? State the same fully and at large, and annex to your answer hereto a copy or copies of all letters, receipts, invoices, accounts, memoranda, and other papers rendered, furnished, or exhibited by either party relating to said transactions and dealings.

Fourteenth. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

HENRY M. PHILLIPS,
W. M. MEREDITH,
For John A. Warner.
FALLON,
For Heald, Woodward & Co.

Cross interrogatories e. p. complainant.

Afterwards, to wit, on the third day of December, A. D. 1847, comes the complainant, by his solicitor, and presents cross interrogatories on

his part sur commission to New York, which, being read and filed, are in the words following, to wit:

MARTIN
vs.
WARNER et al.

Cross interrogatories to be administered to witnesses to be produced on the part of the defendants in this case, or either of them.

1. If, in answer to the fourth interrogatory on the part of the defendants, you state that the complainant, T. P. Martin, or his late partner, S. Franklin, knew that Esenwein, or Esenwein and Company, were engaged in the business of purchasing and selling tobacco, please to state how you acquired your knowledge of the fact you have testified to. Did you ever hear T. P. Martin, or S. Franklin, state their knowledge that Esenwein, or Esenwein and Company, were engaged in the business of buying and selling tobacco, on their own account, or is it not mere matter of opinion or inference on your part?

2. If, in answer to the eleventh interrogatory on the part of the defendants, you state that an account was rendered to the complainant by Esenwein, or Esenwein and Company, of the dealings between them anterior and up to the fourth of September, 1841, please to state whether the drafts drawn by Martin and Franklin upon Esenwein and Company, and forming items on the debtor side of such account, were at the time of rendering such account, or have at any time since been, paid by C. Esenwein, or C. Esenwein and Company; and please to state particularly whether the following drafts did not at that date, and do not now, remain unpaid by the said C. Esenwein, or said C. Esenwein and Company, viz:

1841.—June 2d.—Draft, Martin and Franklin, dated May 27, due September thirtieth, for eight hundred dollars, ($800.)

1841.—June fifteenth.—Draft, Martin and Franklin, dated June 12th, due October 15th, for seven hundred dollars, ($700.)

1841.—July 9th.—Draft, Martin and Franklin, dated July 3d, due November 6th, for three hundred dollars, ($300.)

1841.—August 11th.—Draft, Martin and Franklin, dated July 29th, due December 2d, for eight hundred and fifty dollars, ($850.)

3. If, in answer to the twelfth interrogatory on the part of the defendants, you state that an arrangement was made between the complainant and C. Esenwein, or C. Esenwein and Company, in the year 1842, you are requested to annex to your answer authentic and full copies of all letters written by the said C. Esenwein to the complainant, or Martin and Franklin, in the months of January and February, 1842, and of letters from the complainant to C. Esenwein, or C. Esenwein and Company, during that period.

T. J. WHARTON,
For complainant.

December 2d, 1847.

Commission to New York, filed December 24, 1847.

In the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit of April sessions, 1842; No. 2.

THOMAS P. MARTIN, a citizen of the State of Virginia, who survived Spencer Franklin, also a citizen of the State of Virginia, lately trading as Martin and Franklin, complainant,

vs.

JOHN A. WARNER, a citizen of the State of Pennsylvania, John A. Warner and Co., citizens of the same State, and William Heald, Jacob Heald, Samuel Woodward, and A. J. Bucknor, all citizens of the same State, trading as Heald, Woodward and Co., defendants. } In equity.

The President of the United States, to H. Wharton Griffith, esquire, in New York, commissioner named by, and on behalf of, the complainant, resident in the city of New York, and a Pennsylvania commissioner.

Know ye, that, in confidence of your prudence and integrity, we have given unto you, and by these presents do give unto you, full power and authority, in pursuance of a rule lately made in the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, in a certain action in equity therein depending, wherein the said Thomas P. Martin, a citizen of the State of Virginia, who survived Spencer Franklin, also a citizen of the State of Virginia, lately trading as Martin and Franklin, is complainant, and John A. Warner, a citizen of the State of Pennsylvania, John A. Warner and Co., citizens of the same State, and William Heald, Jacob Heald, Samuel Woodward, and A. J. Bucknor, all citizens of the same State, trading as Heald, Woodward and Co., are defendants, to call before you, at a certain day and place by you for that purpose to be appointed, all and every person and persons who may be named to you by the said complainant as witnesses in the said action, and then and there to examine them, on their respective oaths and affirmations, on certain interrogatories hereunto annexed, touching the premises, and to reduce their testimony to writing; and when you shall have so done, you are to send the same to the said circuit court closed up, and under your seals, plainly and distinctly set, together with this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Philadelphia, this fourteenth [L. S.] day of December, A. D. 1847, and in the seventy-second year of the independence of the said United States.

GEORGE PLITT, *Clerk, C. C.*

THOMAS P. MARTIN, a citizen of the State of Virginia, who survived Spencer Franklin, also a citizen of the State of Virginia, lately trading as Martin and Franklin,

vs.

JOHN A. WARNER, a citizen of the State of Pennsylvania, John A. Warner and Co., citizens of the same State, and William Heald, Jacob Heald, Samuel Woodward, and A. J. Bucknor, all citizens of the same State, trading as Heald, Woodward and Co. } In equity.

Interrogatories to be exhibited to witnesses to be produced, sworn or affirmed, and examined on the part of the complainant in this cause.

1. Do you know the parties complainant and respondents in this cause, or either and which of them, and how long have you known them, or either of them?

2. Did or did not the firm of Martin and Franklin, of Richmond, (Va.,) ship or consign to Charles Esenwein, or Charles Esenwein and Co., of New York, in the months of April, May, June, and July, 1841, for sale on the account of the said Martin and Franklin, certain quantities of manufactured tobacco, of the kind or quality of "chewing tobacco." If you please to state and set forth whether such tobacco, if any was received by, or delivered to the said Esenwein, or Esenwein and Co., when the same was received; whether the same was contained in boxes or otherwise; what was the number of boxes received, and their weight respectively; by what numbers or other terms of description the same were known or designated; and how or in what name or names such boxes were branded or marked. And if you have any statement or account of any tobacco so shipped and received, designating the marks, numbers, and weight or description of such tobacco, please to annex the same to your answer, and verify or authenticate the same; and state where such account or statement has been taken or derived, and whether the same is an accurate account or statement of such tobacco, to the best of your knowledge and belief.

3. If you state that any such tobacco, as is mentioned in the preceding interrogatory, was received by Charles Esenwein, or Charles Esenwein and Co., in New York, please to state whether the same or some part thereof was in the store or stores or possession of the said Esenwein, or Esenwein and Co., at the end of August, and beginning of September, A. D. 1841.

4. Look at the paper writing hereunto annexed. Does the same contain an accurate statement and account, or otherwise, of tobacco consigned by Martin and Franklin, of Richmond, (Va.,) to Charles Esenwein, or Charles Esenwein and Co., and if you have the means or opportunity, compare it with the books of the said Esenwein, or Esenwein and Co., or other authentic documents, and state whether or not the said paper

corresponds with such books and documents, and if not, in what respect it is inaccurate.

T. J. WHARTON,
For complainant.

October 12th, 1847.

Copy of paper referred to in the 4th interrogatory.

A statement of shipments made to Charles Esenwein and Co.

April 20. 90 boxes tobacco per schooner Manchester, viz:
30 boxes 8s. No. 254 to 289 = 5189 lbs. nett
34 boxes 16s. No. 290 to 323 = 4851 lbs. nett } Branded Thomas P. Martin.
20 boxes 32s. No. 324 to 343 = 2860 lbs. nett

May 25. 62 boxes tobacco per schooner Lynchburg, viz:
26 boxes Long 16s. No. 516 to 541 = 3760 lbs. nett } Branded T. P. Martin.
20 boxes Long 12s. No. 480 to 499 = 2905 lbs. nett
16 boxes Long 16s. No. 500 to 515 = 1591 lbs. nett } Branded H. Wit and Son.

June 12. [64] boxes tobacco per schooner Manchester, viz:
8 boxes Long 16s. No. 544 to 551 = 1147 } Branded Thomas P. Martin.
56 boxes Long 32s. No. 552 to 607 = 5097

July 3. [28] half boxes tobacco per schooner Leontines, viz:
28 half boxes 32s. 753 to 780 = 2539 lbs. nett.

July 28. [2 boxes and 76 half boxes] tobacco, per schooner Weymouth.
2 boxes and 76 half boxes 32s. No. 866 to 943 = 7181 lbs. nett.

1847, December 14th. A true copy from the original file.
GEORGE PLITT, *Clerk, C. C.*

THOMAS P. MARTIN, who, &c.
vs.
JOHN A. WARNER et al. } In equity.

Circuit court, United States, April sessions, 1842.

The defendants, John A. Warner and William Heald, Jacob Heald, and Archimedes J. Bucknor, who survived Samuel Woodward, lately trading as Heald, Woodward and Co., join in the commission with the plaintiff, and file the following interrogatories:

First. What is your present occupation, and where do you reside; what was your occupation, and where did you reside, in August, September, and October, 1841; and at any other period of the time at which the circumstances stated in your testimony respectively occurred?

Second. Was not Charles Esenwein, or the firm of Esenwein and Co., in the summer and fall of 1841, engaged in the purchase and sale of tobacco, manufactured and otherwise? State all your knowledge herein, the extent of their dealings, the standing of the house, its positive and comparative position as dealers in the article of tobacco. Was or was not a large part of their business, and if any, how much, done on their own account, and not as consignee for any other person?

Third. Did not the said Charles Esenwein, or the said firm, receive at the period spoken of tobacco shipped or consigned to him or them, for his or their own account; to what extent had the said firm of the said Esenwein such dealings?

Fourth. Did or did not the complainant, Thomas P. Martin, and his partner, Spencer Franklin, or one of them, know that the said Esenwein and Co. were engaged in the business of purchasing and selling tobacco? State all your knowledge herein.

Fifth. Was or was not the said Esenwein, or the said Esenwein and Co., in September, 1841, or thereabouts, largely indebted to Charles M. Connolly, of New York; if so, in what sum, and how and when did the said indebtedness arise; was any part *for* any tobacco owned by said Esenwein, or said Esenwein and Co., and sold for his or their own account; if so, was any of it tobacco manufactured by, or received from, complainants? State all your knowledge herein.

Sixth. Did or did not a settlement of account and indebtedness take place between said Connolly and said Esenwein, or Esenwein and Co.; if so, when, on what terms? State fully its character and particulars. Did any tobacco manufactured by, or received from, the complainants, pass from one to the other? State fully your knowledge herein.

Seventh. If, in answer to the sixth cross interrogatory, you state that said Connolly did deliver or return to said Esenwein, or said Esenwein and Co., any tobacco that had been manufactured by, or received from, complainant, state what became of the said tobacco; was it sold; if yea, by whom, and what became of its proceeds; did they, or any portion thereof go to the complainant in this case? If so, state when and how much; and annex hereto a particular account of the tobacco, its sales and payment of its proceeds, and copies of all receipts, and other papers relating thereto.

Eighth. Has the said Esenwein, or the said Esenwein and Co., had any settlement with the said complainant since the first day of September, 1841? If yea, state the particulars of such settlement, and annex hereto copies of all papers relating thereto, especially receipts, releases, or other papers written or signed by the complainant, or on his behalf.

Ninth. Has or has not the said complainant made with the said Esenwein, or the said Esenwein and Co., a definite arrangement of all the matters in account between them? If so, state the same fully, and annex hereto copies of any papers relating thereto.

Tenth. State particularly what became of each package or box described or referred to in the statement annexed to the complainant's fourth interrogatory; also the complainant's knowledge thereof.

Eleventh. Has any account been exhibited or rendered to complainant by said Esenwein, or said Esenwein and Co., of the dealings between them anterior and up to the fourth day of September, 1841?

If so, state the same fully, and annex hereto a copy of said account. State also if the balance there appearing has been since paid, and how and when?

Twelfth. Did any arrangement take place between said complainant, and said Esenwein, or said Esenwein and Co., during the year 1842, or at any time since 1841; if so, what, and when? Did a receipt pass from one to the other? If so, annex hereto a copy of the same, and of all accounts, memoranda, and other papers relating to the said transac-

tion. State also if the money there appearing due has been since paid; and if so, to whom, and how and when?

Thirteenth. Has the said Esenwein, or Esenwein and Co., had any dealings or transactions with said complainants since the 4th September, 1841? If aye, what dealings or transactions? State the same fully and at large, and annex to your answer hereto a copy or copies of all letters, receipts, invoices, accounts, memoranda, and other papers rendered, furnished, or exhibited by either party relating to said transactions and dealings.

Fourteenth. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

HENRY M. PHILLIPS,
W. M. MEREDITH,
For John A. Warner.
FALLON,
For Heald, Woodward and Co.

1847, December 14th. A true copy from the original filed.
GEORGE PLITT, *Clerk, C. C.*

MARTIN
vs.
WARNER et al.

Cross interrogatories to be administered to witness to be produced on the part of the defendants in this case, or either of them:

1. If, in answer to the fourth interrogatory on the part of the defendants, you state that the complainant, T. P. Martin, or his late partner, S. Franklin, knew that Esenwein, or Esenwein and Company, were engaged in the business of purchasing and selling tobacco, please to state how you acquired your knowledge of the fact you have testified to. Did you ever hear T. P. Martin or S. Franklin state their knowledge that Esenwein, or Esenwein and Company, were engaged in the business of buying and selling tobacco on their own account, or is it not mere matter of opinion or inference on your part?

2. If, in answer to the eleventh interrogatory on the part of the defendants, you state that an account was rendered to the complainant by Esenwein, or Esenwein and Company, of the dealings between them anterior and up to the fourth of September, 1841, please to state whether the drafts drawn by Martin and Franklin upon Esenwein and Company, and forming items on the debtor side of such account, were at the time of rendering such account, or have at any time since been, paid by C. Esenwein, or C. Esenwein and Company; and please to state particularly whether the following drafts did not at that date, and do not now, remain unpaid by the said C. Esenwein, or said C. Esenwein and Company, viz:

1841, June 2d. Draft, Martin and Franklin, dated May 27, due September thirtieth, for eight hundred dollars, ($800.)

1841, June fifteenth. Draft, Martin and Franklin, dated June 12th, due October 15th, for seven hundred dollars, ($700.)

1841, July 9th. Draft, Martin and Franklin, dated July 3d, due November 6th, for three hundred dollars, ($300.)

1841, August 11th. Draft, Martin and Franklin, dated July 29th, due December 2d, for eight hundred and fifty dollars, ($850.)

3. If, in answer to the twelfth interrogatory on the part of the defendants, you state that an arrangement was made between the complainant and C. Esenwein, or C. Esenwein and Company, in the year 1842, you are requested to annex to your answer authentic and full copies of all letters written by the said C. Esenwein to the complainant, or Martin and Franklin, in the months of January and February, 1842, and of letters from the complainant to C. Esenwein, or C. Esenwein and Company, during that period.

T. J. WHARTON, *for compl't.*

December 2d, 1847.

1847, December 14th. A true copy from the original filed.

GEORGE PLITT, *Clerk, C. C.*

Deposition of witnesses produced, sworn, and examined on the twentieth day of December, in the year of our Lord one thousand eight hundred and forty-seven, at the office of H. Wharton Griffith, in the city and State of New York, by virtue of a commission issuing from the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, to the said H. Wharton Griffith, in New York, a Pennsylvania commissioner, directed for the examination of witnesses in a certain cause depending in said court, wherein Thomas P. Martin, a citizen of the State of Virginia, (who survived Spencer Franklin, also a citizen of the State of Virginia,) lately trading as Martin and Franklin, is complainant, and John A. Warner, a citizen of the State of Pennsylvania, John A. Warner and Co., citizens of the same State, and William Heald, Jacob Heald, Samuel Woodward, and A. J. Bucknor, all citizens of the same State, trading as Heald, Woodward and Co., are defendants.

Charles Esenwein, of the city and State of New York, aged forty-seven years, or thereabouts, being produced, sworn, and examined on behalf of the complainant, deposeth as follows:

1. To the first interrogatory on the part of the complainant he answers as follows: I know all the parties, complainant and respondent, and have known them for many years.

2. To the second interrogatory on the part of the complainant he answers as follows: The firm of Martin and Franklin, of Richmond, Virginia, did ship and consign to Charles Esenwein and Co., of New York, in the months of April, May, June, and July, 1841, on account of Martin and Franklin, some tobacco—chewing tobacco; it was received by Charles Esenwein and Co.; it was in boxes; this paper (marked A) contains a full description of the several consignments, and I refer you to that; it is taken from the books of Charles Esenwein

and Co., under which name I did business at that time, and is an accurate account to the best of my knowledge and belief.

3. To the third interrogatory on the part of the complainant he answers as follows: Part of the tobacco was in the store of Charles Esenwein and Co. at the close of August and in the beginning of September, but you will see the dates in the account I have just given you, (marked B) which is a copy of the account sales.

4. To the fourth interrogatory on the part of the complainant he answers as follows: The paper shown to me is an accurate statement, I believe.

1. To the first interrogatory on the part of the defendants he answers as follows: I sell tobacco on commission and brokerage, and reside in the city of New York; in August, September, and October, 1841, I was in Europe unoccupied; in May, June, and July, of that year, I was in New York.

2. To the second interrogatory on the part of the defendants he answers as follows: As I constituted in myself the firm of Charles Esenwein and Co., I will answer in the first person; in the year 1841, up to the month of August, I was engaged in the purchase and sale of tobacco of all kinds to a large amount; the standing and credit of my house was very high; I was the largest dealer in the tobacco line in the city to the best of my knowledge; two-thirds of the business, at least, was on my own account.

3. To the third interrogatory on the part of the defendants he answers as follows: I do not recollect of any tobacco being shipped or consigned to me on my own account during that time, and therefore cannot state the amount of such dealings.

4. To the fourth interrogatory on the part of the defendants he answers as follows: I have no doubt that both Martin and Franklin knew that my business was buying and selling tobacco, as I have bought publicly.

5. To the fifth interrogatory on the part of the defendants he answers as follows: Yes, I was largely indebted at that time to Charles M. Connolly—rising of thirty thousand dollars; over two thirds of which arose from cash lent on accommodation paper; I do not think I owed him one dollar on account of tobacco owned by me.

6. To the sixth interrogatory on the part of the defendants he answers as follows: There has been no settlement of accounts between Connolly and myself; as to my indebtedness to him, he received a dividend on his claims against me, the same as my other creditors, about four or five years ago. On my return from Europe, in the fall of 1841, I found that my attorney, Caprano, had made an assignment to Charles M. Connolly, which assignment I cancelled and annulled on my arrival with Connolly's consent; by that assignment Connolly had taken possession of 17 whole and 12 half boxes of manufactured tobacco, being the only stock on hand unsold at the date of the assignment belonging to the complainant's said firm, which I then resumed possession of.

7. To the seventh interrogatory on the part of the defendants he

answers as follows: After I took possession of that tobacco, I sold it, and rendered account sales to Martin and Franklin, of which this paper (marked C) is a copy. The proceeds I paid to Martin, and this is a true copy of the receipt (marked D.)

8. To the eighth interrogatory on the part of the defendants he answers as follqws: There has been no settlement between me and the complainant since 1st September, 1841, other than just mentioned.

9. To the ninth interrogatory on the part of the defendants he answers as follows: There has been no other arrangement other than is contained in the receipt just shown you (marked D.)

10. To the tenth interrogatory on the part of the defendants he answers as follows: The disposition of every package or box referred to is specified in the papers marked B and C, which I have given you. As to the complainant's knowledge I cannot say, but the account sales were either handed or sent to Mr. Martin.

11. To the eleventh interrogatory on the part of the defendants he answers as follows: I do not recollect of any account being rendered by me to complainant anterior and up to the 4th of September, 1841, excepting one, of which this paper, which I hand you, (marked E) is a copy. The balance which appears there, has not been paid.

12. To the twelfth interrogatory on the part of the defendants he answers as follows: I have already given you a copy of a receipt (marked D,) which is the only arrangement and the only receipt between complainant and myself since 1841.

13. To the thireenth interrogatory on the part of the defendants he answers as follows: Since the 4th September, 1841, I have had no dealings with complainant other than such as I have already stated.

14. To the fourteenth interrogatory on the part of the defendants he answers as follows: Having been absent in Europe during most of the time when these transactions occurred, I have stated in my answers all I could learn from the books, as well as that which happened since my return.

1. (Cross.) To the first cross interrogatory he answers as follows: As I before answered, I have no doubt that Martin and Franklin knew that I was engaged in the business of buying and selling tobacco, as I made no secret of it, and bought largely almost every day. I do not recollect ever hearing either Martin or Franklin state their knowledge that I was engaged in that business on my own account, but it is a matter of strong inference on my part that they must have known my business.

2. To the second cross interrogatory he answers as follows: The drafts you mention were not paid, and are still unpaid.

3. To the third cross interrogatory he answers as follows: There was no arrangement made between the complainant and myself in 1842.

CHAS. ESENWEIN.

H. WHARTON GRIFFITH.

Engelbert Caprano, of the city and state of New York, aged thirty-four years or thereabouts, being produced, sworn, and examined on behalf of the complainant, deposeth as follows:

1. To the first interrogatory on the part of the complainant he answers as follows: I know all the parties, complainant and respondent; my acquaintance with the complainant commenced by correspondence in the spring of 1841, and I have known him personally since the fall of 1841. I have known the defendants personally for the last twelve years, with the exception of William and Jacob Heald, with one of whom (I cannot say which) I have been slightly acquainted since the fall of 1841. I do not know the other Mr. Heald.

2. To the second interrogatory on the part of the complainant he answers as follows: There was a quantity of tobacco—manufactured chewing tobacco—shipped and consigned by Martin and Franklin, of Richmond, Virginia, at those times on their account, to the house of Charles Esenwein and Co. Charles Esenwein and Co. received it. The paper marked A, which was furnished you by Mr. Charles Esenwein in his examination, is in my handwriting; I took it from the books of Charles Esenwein and Co., and it contains a full description and will be an answer to your question; to the best of my knowledge and belief it is a correct statement.

3. To the third interrogatory on the part of the complainant he answers as follows: Part of the tobacco, as you will see by the paper marked B, furnished by Mr. Charles Esenwein in his examination, and is in my handwriting taken from the books of Charles Esenwein and Co., did remain in the store of Charles Esenwein and Co., at the end of August and the beginning of September, 1841.

4. To the fourth interrogatory on the part of the complainant he answers as follows: The paper you show me, is, I believe, a correct statement of Martin and Franklin's consignment—excepting in the invoice of June 12, the 56 boxes there represented as whole boxes should be half boxes.

1. To the first interrogatory on the part of the defendants he answers as follows: I am clerk to Frederick Esenwein, and I reside in the city of New York. In August, September, and October, 1841, I resided in the city of New York, and was clerk to Charles Esenwein and Co., with a power of attorney to transact business for that firm.

2. To the second interrogatory on the part of the defendants he answers as follows: The house of Charles Esenwein and Co. was not, at that time, very extensively engaged in the buying and selling of tobacco. If you wish to know the standing of the house and the extent of its business up to the time of its failure in September, 1841, it was considered very high. It did a very large business; larger, perhaps, than any in New York in the tobacco line. More than half of Charles Esenwein and Co's business was on their own account.

3. To the third interrogatory on the part of the defendants he answers as follows: I do not know of any tobacco shipped or consigned to them, or rather him, for Charles Esenwein was Charles Esenwein and Co., at that time.

4. To the fourth interrogatory on the part of the defendants he answers as follows: I cannot state as to what knowledge Martin and

Franklin, or either of them, had as to the business of Charles Esenwein and Co.

5. To the fifth interrogatory on the part of the defendants he answers as follows: Charles Esenwein and Co. was largely indebted to Mr. Connolly at that time—in September, 1841, about thirty thousand dollars. The indebtedness arose from borrowed money, accommodation notes, and goods bought in 1841. I do not know that any money was owing to him on account of tobacco owned by Charles Esenwein and Co.

6. To the sixth interrogatory on the part of the defendants he answers as follows: I know of no settlement of accounts between Connolly and Charles Esenwein and Co. During the absence of Mr. Charles Esenwein in Europe, in September, 1841, as his attorney, I made an assignment to Mr. Connolly, by which, among other things, I handed over to him 17 whole and 12 half boxes of manufactured tobacco, being the balance of complainant's consignment left on hand. When Mr. Esenwein returned, in the latter part of November, 1841, the assignment was cancelled, and that tobacco was returned to Charles Esenwein and Co.

7. To the seventh interrogatory on the part of the defendants he answers as follows: That tobacco was sold, and the account sales rendered to Martin and Franklin. I refer you to the papers marked C and D, which are in my handwriting, and are correct copies, furnished by Mr. Charles Esenwein in his examination, for the particulars.

8. To the eighth interrogatory on the part of the defendants he answers as follows: I know of no other settlement other than that in relation to the sale contained in the paper marked C.

9. To the ninth interrogatory on the part of the defendants he answers as follows: I know of no arrangement except the receipt, a copy of which you have, marked D.

10. To the tenth interrogatory on the part of the defendants he answers as follows: The two papers marked B and C will give you the particulars of what became of the packages or boxes in that statement. The account sales were sent or delivered to Mr. Martin.

11. To the eleventh interrogatory on the part of the defendants he answers as follows: The only account I know of rendered up to, or anterior to, the 4th September, 1841, is contained in the paper marked E, which is in my handwriting, from the books of Charles Esenwein and Co., and furnished by Mr. Charles Esenwein in his examination. I do not know that the balance which appears there has been paid.

12. To the twelfth interrogatory on the part of the defendants he answers as follows: I know of no arrangement between the complainant and Charles Esenwein, or Charles Esenwein & Co., since 1841, excepting the receipt already referred to, marked D.

13. To the thirteenth interrogatory on the part of the defendants he answers as follows: I know of no dealings between them since 4th September, 1841, excepting such as I have already mentioned.

14. To the fourteenth interrogatory on the part of the defendants he answers as follows: I have stated all I know in the matter.

1. (Cross.) To the first cross interrogatory he answers as follows: As I could not state as to the knowledge of the complainant or his late partner of the business of Charles Esenwein and Co., I have nothing to reply.

2. To the second cross interrogatory he answers as follows: I do not know whether those drafts have been paid. They were unpaid at the time the account was rendered, 4th September, 1841.

3. To the third cross interrogatory he answers as follows: I know of no arrangement between the complainant and Charles Esenwein, or Charles Esenwein & Co., in the year 1842.

E. CAPRANO.

H. WHARTON GRIFFITH.

A.

Statement of tobacco received by Chas. Esenwein & Co., from Mess. Martin & Franklin, of Richmond, Va., to sell for their account.

1841.		Whole boxes.	Half boxes.
May 12	Received ex schooner Manchester:		
	36 whole boxes T. P. Martin's 8's lump		
	34 do. do. do. 16's "		
	20 do. do. do. 32's "	90	
June 7	Received ex schooner Lynchburg:		
	20 whole boxes T. P. Martin's long 12's lumps		
	16 do. do. H. Wit and Son 16 "		
	26 do. do. T. P Martin's 16 "	62	
June 29	Received ex schooner Manchester:		
	8 whole boxes T. P. Martin's 16 lump		
	56 half do. do. 32 "	8	56
July 8	Received ex schooner Leontine:		
	28 half boxes T. P. Martin's 32's lumps.....	.....	28
August 15	Received ex schooner Weymouth:		
	2 whole and 76 half boxes T. P. Martin's 32's.....	2	76
	Received in all, boxes....	162	160

This is the paper referred to by Charles Esenwein and Engelbert Caprano in their examinations, as the paper marked A.

CHAS. ESENWEIN,
E. CAPRANO.

H. WHARTON GRIFFITH.

B.

Account sales of part of 162|1 *and* 160|2 *boxes small lump tobacco received May* 12*th*, 1841; 90 *boxes per schooner Manchester, June* 7*th*; 62 *boxes per schooner Lynchburg, June* 29; 8|14, 56|2 *boxes per schooner Manchester, July* 8; 28|2 *boxes per schooner Leontine, August* 15; 2|1 *and* 76|2 *boxes per schooner Weymouth*; *and sold by Charles Esenwein & Co., for account of Mess. Martin & Franklin, of Richmond, Va.*

1841.												
May	12	Sold at 8 ms.	7	boxes	T. P. Martin's	32, &	1193	225	968	18	$174	24
June	10	" for cash	1|1	"	"	12, &	171	32	139	15	20	85
	16	" at 8 ms.	5|1	"	"	32's	861	164	697	18	125	46
	30	" "	1|1	"	"	"	175	34	141	18	25	38
July	14	" cash	1|2	"	"	"	113	27	86	19	16	34
Aug.	5	" at 8 ms.	1|2	"	"	"	111	24	87	18	15	66
	24	" cash	2|2	"	"	"	221	49	172	18	30	96
	31	" at 8 ms.	24|2	"	"	"	2652	553	2099	17	356	83
Sept.	2	" "	36|1	"	"	8's	6145	1125	5020	12	602	40
	2	" "	18|1	"	"	12's	3233	562	2661	12	319	32
	2	" "	60|1	"	"	16's	10286	1896				
							Extra tare,	120				
								2016	8270	12	992	40
	2	" "	120|2	"	"	32's	13594	2854				
							Extra tare,	120				
	2	"			"			2974	10620	16	1699	20
	2	" cash	1|1	"	"	12's	168	29	139	15	20	85
	2	" 8 ms.	|6	"	H. Wit & Son,	16's	2084	524	1560	11	171	60
									Amount brought over....		$4571	49

1840.									
							Amount brought forward....		$4571 49
Sept.	4	Delivered 8|1	boxes	T. P. Martin's	32's	to C. M. Connolly			
		" 1|1	"	do.	12's	do.			
		" 8|1	"	do.	16's	do.			
		" 12|2	"	do.	32	do.			
									4571 49
		Charges:							
		Freight per schooner Manchester, 90 boxes.....						$18	
		" " Lynchburg, 62 "						12 40	
		" " Manchester, 64 "						8 60	
		" " Leontine, 28 "						2 80	
		" " Weymouth, 78 "						8	
		Cartage to store						10 12	
		Storage						25 20	
		Fire insurance.....						10 50	
		Weighing and labor						18 62	
		Advertising and postage						3 11	
		Commission and guarantee, 6½						297 14	414 49
		Due by average April 19–22d, '42							$4157 00

E. E. New York, *September 4th*, 1841.

This is the paper referred to by Charles Esenwein and Engelbert Caprano in their examinations as the paper marked B.

CHAS. ESENWEIN,
E. CAPRANO.

H. Wharton Griffith.

C.

Account sales of 17|1 *and* 12|2 *boxes tobacco remaining on hand September* 4*th*, 1841, *and sold for account of Messrs. Martin & Franklin, of Richmond, Va.*

1841.								
Dec. 30	Sold at 8 ms. credit:							
	T. P. Martin's	16's 8|1 boxes and	1359	243	1116	at 12	.....	$133 92
	Do.	32's 8|1 & 12|2 &	2696	535	2161	14	.....	302 54
	Do.	12's 1| box	166	31	135	12½	.....	16 88
								$453 34
	Charges:							
	Storage and fire insurance						$5 80	
	Weighing and labor						1 81	
	Advertising						1 27	
	Commission and guarantee 6½ per ct.						29 46	38 34
	Due August 30–Sept. 3d, 1842						.....	$415 00

E. E.

NEW YORK, *December* 31*st*, 1841.

This is the paper referred to by Charles Esenwein and Engelbert Caprano in their examinations as the paper marked C.

CHAS. ESENWEIN,
E. CAPRANO.

H. WHARTON GRIFFITH.

D.

Received, New York, June 11th, 1842, from Charles Esenwein, four hundred [and] fifteen dollars in full for nett proceeds of tobacco on hand on 4th September last, and sold by him 31st December last, as per account sales rendered due, September next, less interest.

$407 73 cash.
7 27 interest.

$415 00

(Signed) MARTIN & FRANKLIN.

This is the paper referred to by Charles Esenwein and Engelbert Caprano in their examinations as the paper marked D.

CHAS. ESENWEIN,
E. CAPRANO.

H. WHARTON GRIFFITH.

E.

Messrs. Martin & Franklin, of Richmond, in account with C. Esenwein & Co.

		Dr.			
1841.					
April 26	To cash paid insurance, $2,200, per Manchester..	4 08		30	$12 25
May 6	your draft dated Ap'l 22, at 4 mo., due Aug. 25		9	2 19	1250 00
29	cash paid insurance, $1,300, per Lynchburg..	3 5		14	7 25
June 2	your draft dated May 27, at 4 mo., due Sept. 30		26	4 05	800 00
15	your draft dated June 12, at 4 mo., due Dec. 15	1 11		5 57	700 00
15	cash paid insurance, $1,100. per Manchester..	2 19		9	6 75
July 6	cash paid, $450, per Leontine	1 28		3	3 50
9	your draft dated July 3, at 4 mo., due Nov. 3-6	2 02		3 61	300 00
31	cash paid insurance, $1,300, per Weymouth..	1 4		6	7 75
Aug. 11	balance due us from Spencer Franklin, from June 1, '41	3 4		12 74	697 10
11	your draft dated July 29, at 4 mo., due Dec. 2	2 28		14 55	850 00
Sept. 4	Received interest from credit side			184 30	
4	Balance of interest				172 07
				$199 85	$4806 67
1841.					
Sept. 4	To balance due us to-day				$649 67
	E. E.				
		Cr.			
1841.					
Sept. 4	By nett amount sales 160|1 and 162|2 boxes tobacco, due April 22d	7 18		$184 20	4157 00
4	Received interest pro debit side			27 78	
4	" balancing interest			172 07	
4	" balance due us				649 67
	E. E.			$199 85	$4806 67

This is the paper referred to by Charles Esenwein and Engelbert Caprano in their respective examinations as the paper marked E.

CHARLES ESENWEIN,
E. CAPRANO.

H. WHARTON GRIFFITH.

Demurrer, &c., taken from the file.

Afterwards, to wit, on the twenty ninth day of January, A. D. one thousand eight hundred and forty-eight, the motion of T. J. Wharton, esquire, for complainant, to take from the file or dismiss the demurrer and plea filed in this case by Mr. Fallon, for Heald, Woodward and Co., is granted by the court, and the demurrer and plea are ordered to be taken from the file.

Replications to further answers of defendants.

Afterwards, to wit, on the twelfth day of April, A. D. one thousand eight hundred and forty-eight, comes the complainant, by his solicitor, and presents his replications to the further answers of the defendants, which, being read and filed, are in the words following, to wit:

MARTIN vs. WARNER et el. } In equity—No. 2.

Circuit court, United States, April, 1842.

The replication of Thomas P. Martin, who survived Spencer Franklin, lately trading as Martin and Franklin, complainants, to the further answer of John A. Warner, defendant.

This repliant, saving and reserving to himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereto says, that he will aver, maintain, and prove the bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer is uncertain, untrue, and insufficient to be replied to by this repliant; without this, that any other matter or thing whatsoever in said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by said bill he has heretofore prayed.

WILLIAMS, *for complainant.*

April 11, 1848.

MARTIN vs. WARNER et al. } In equity.—No. 2.

Circuit court, United States, April, 1842.

The replication of Thomas P. Martin, who survived Spencer Franklin, lately trading as Martin and Franklin, complainants, to the further plea and answer of William Heald and Archimedes Bucknor, who survived Samuel Woodward and Jacob Heald, trading as Heald, Woodward and Co., defendants.

This repliant, saving and reserving to himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereto says, that he will aver, maintain, and prove the bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer is uncertain, untrue, and insufficient to be replied to by this repliant; without this, that any other

matter or thing whatever in said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by the said bill he has already prayed.

WILLIAMS, *for complainant.*

April 11, 1848.

Decree of the court.

Afterwards, to wit, on the twenty-fifth day of September, A. D. 1848, the court pronounce their opinion upon the case, and direct a decree to be made and entered in favor of the complainant.

And thereupon, to wit, on the twenty first day of October, A. D. 1848, it is by the court ordered and decreed as follows, to wit:

MARTIN vs. WARNER

Circuit court, September 25th, 1848.

This cause having been heard and debated before the judges, by counsel on both sides, on the 25th, 26th, 27th, and 28th of April last, upon the bill, answers, and proofs taken in the cause, the court do order and decree, that the defendants do pay to the complainants the sum of $2869 $\frac{14}{100}$, with interest from the 25th of September, 1848, this being the amount of such of the bills of exchange accepted by Esenwein and Co. upon the tobacco shipped to the said Esenwein and Co., as were paid by the complainant, together with the charges of protest and re-exchange by them incurred and borne by reason of the non-payment of such acceptances by said Esenwein and Co.; deducting therefrom the balance which would have been payable to Esenwein and Co. by the complainant, if the said acceptances had been paid by said Esenwein and Co.; interest being charged for and against the parties according to law.

Per cur.

R. C. GRIER,
J. K. KANE.

Appeal.

Whereupon, afterwards, to wit, on the 26th day of October, A. D. one thousand eight hundred and forty-eight, the defendants pray leave to appeal from the decree aforesaid to the Supreme Court of the United States, and the same is allowed, upon security being given; and thereupon, the bond of Archimedes J. Bucknor, William Heald, John A. Warner, Alexander Osbourn, and John Linton, is presented to the court, and is by them approved; said bond being in the words following, to wit:

Appeal bond.

THOMAS P. MARTIN, a citizen of the State of Virginia, who survived Spencer Franklin, late trading as Martin and Franklin, vs. JOHN A. WARNER and others. } In equity.

Circuit court, U. S., eastern district, Pa., April session, 1842.—No. 2.

Know all men by these presents, that we, Archimedes J. Bucknor and William H ·ald, by his attorney, the said Archimedes J. Bucknor, who survived Jacob Heald and Samuel Woodward, deceased, trading as Heald, Woodward and Co., John A. Warner, John Linton, and Alexander Osbourn, are held and firmly bound to Thomas P. Martin, who survived Spencer Franklin, lately trading as Martin and Franklin, in the sum of six thousand dollars, to be paid to the said Thomas P. Martin, his executors, administrators, and assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, by these presents. Sealed with our seals, this twenty-sixth day of October, A. D. 1848.

Whereas, the above named Archimedes J. Bucknor and William Heald, who survived Jacob Heald and Samuel Woodward, trading as Heald, Woodward and Co., and the said John A. Warner, have entered and prosecuted an appeal to the Supreme Court of the United States, to remove the record and proceedings of a certain suit in the circuit court o the United States, for the eastern district of Pennsylvania, No. 2, April session, 1842, wherein the said Thomas P. Martin, who survived Spencer Franklin, late trading as Martin and Franklin, are complainants, and the said Archimedes J. Bucknor and William Heald, together with Samuel Woodward and Jacob Heald, since deceased, trading as Heald, Woodward and Co., and John A. Warner, are defendants; and whereas, a decree was lately, to wit, on the twenty-first day of October, A. D. 1848, given and pronounced in favor of the said complainants and against said defendants. Now, therefore, the condition of this obligation is such, that if the above named Archimedes J. Bucknor and William Heald, who survived Samuel Woodward and Jacob Heald, trading as Heald, Woodward and Co., and John A. Warner, aforesaid, shall prosecute the said appeal with effect, and answer all damages and costs, if they shall fail to make good their plea and appeal, then this obligation shall be void, otherwise to remain in full force and virtue.

ARCHIMEDES J. BUCKNOR, [SEAL.]
WILLIAM HEALD, [SEAL.]
By his attorney.
ARCHIMEDES J. BUCKNOR, [SEAL.]
JOHN A. WARNER, [SEAL.]
ALEX. OSBOURN, [SEAL.]
JOHN LINTON, [SEAL.]

Sealed and delivered in the presence of:
J. BURCHARD, *U. S. Comm'r.*

The amount of the foregoing bond, and the sufficiency of the sureties, are satisfactory, and accordingly approved.

R. C. GRIER.

UNITED STATES OF AMERICA,
Eastern district of Pennsylvania, set:

I certify the foregoing to be a true and faithful copy of the record and proceedings of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, in a certain suit in equity therein lately depending, between Thomas P. Martin, complainant, and John A. Warner and others, defendants.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of the said circuit court, at Philadelphia, this first day of December, A. D. 1848, and in the seventy-third year of the independence of the United States.

[L. S.]

GEORGE PLITT, *Clerk of circuit court.*

Agreement of counsel.—Filed November 2, 1848.

MARTIN vs. WARNER et al. } In equity.

C. C. U. S., April sess., 1842.—No. 2.

It is agreed that the above suit shall be taken and considered to have been duly revived in all respects against the personal representatives of Samuel Woodward and Jacob Heald, viz., against William Heald, administrator of the estate of Jacob Heald, and Alexander Osbourn, executor of Samuel Woodward, before the rendering of the decree in this case.

It is also agreed that the appeal from the decree, as made and entered, and the bond, as given and filed, shall be taken and considered as having been made and entered after the above agreement filed, and shall be considered as entered and given, as well by the surviving defendants as also by the personal representatives of the deceased defendants.

T. J. WHARTON, *for compl't.*
FALLON, *for def'ts.*

October 28th, 1848.

Opinion of the court, by Mr. Justice Grier.

MARTIN AND FRANKLIN vs. WARNER AND Co., and HEALD, WOODWARD & Co. } In equity.

In circuit court, United States, eastern district of Pennsylvania.

Opinion of the court.

This case was commenced in October, 1841, and not brought to final hearing till May, 1848.

As so many years were required for the preparation of it, and so many days consumed in a very learned and able investigation and discussion of it by counsel, the court have also taken some time to give it a careful consideration.

The facts of the case, as developed by the pleadings and evidence, are briefly these:

Martin and Franklin, the complainants, are manufacturers of tobacco in Virginia. Esenwein was a large dealer in tobacco in New York, doing business as a factor, and also buying and selling on his own account, and using the style and name of "Esenwein and Co." The complainants had consigned large quantities of their tobacco to Esenwein as their factor in the spring and summer of 1841, and drawn bills on him for its value, which would fall due in the fall and winter of 1841 and 1842. In the summer of 1841, Esenwein left New York for Europe in embarrassed circumstances as was known to his friends, and leaving his business in the care of one Caprano, his clerk.

The defendants, Warner and Co., dealt with Esenwein; Warner had once been in partnership, and still continued on intimate terms with him. They had lent him their notes to sustain his credit during his absence to the amount of near $40,000. These notes would fall due on the first and fourth of November, December, January, February, and March following. On the second of September, 1841, Warner came to New York, knowing of Esenwein's absence and expecting his insolvency, stating at the same time "that he came to New York to see if he could not, with the aid of friends, get the house of Esenwein and Co. out of its approaching difficulties. But being unable to effect this the house fails, and Warner proceeds to purchase a great portion of the stock in hand from Caprano, and gets possession also, at the same time, of some fifteen thousand dollars of notes and book accounts due to Esenwein and Co. The day after this transaction Caprano assigned the remnants of the stock and effects of Esenwein and Co. to another friend (who had advanced his credit to support the firm) for the benefit of certain preferred creditors.

Among the goods received by Warner from Caprano were two hundred and fifty-six boxes of manufactured tobacco, which belonged to the complainants. Warner paid no money on the receipt of this property, gave no acceptance nor other negotiable security on the faith of it, but credited the price in his account current with Esenwein and Co., in which he had charged them with his accommodation notes previously lent, and which, as Esenwein was clearly insolvent, he justly concluded he would be compelled to take up as they should fall due. As soon as the tobacco was transported to Philadelphia, Warner and Co. delivered it over to Heald, Woodward and Co. The complainants hearing of the failure of Esenwein, and of the disposition which had been made of their tobacco by Caprano, wrote immediately, 13th September, 1841, to Heald, Woodward and Co., who were their agents in Philadelphia, requesting them to use their endeavors to get the tobacco from Warner. To this request Heald, Woodward and Co. replied,

stating the circumstances of Warner's alleged purchase, but concealing the fact that they themselves had received the tobacco from Warner, and advising complainants to give up further pursuit of their property because Warner's title to it must be good, as he had consulted eminent counsel in New York and Philadelphia on the subject. On the 24th September formal demand was made by complainants' counsel on Warner and Co. for the tobacco, or to make arrangements to pay its value to the owners, and on refusal this bill was filed in October following.

Before proceeding to consider the merits of this controversy, it will be proper to dispose of some preliminary objections which have been urged against the mode in which complainants have sought their relief, and the sufficiency of the pleadings

1. It has been urged that the court are bound to dismiss this bill, because the complainant has a full and complete remedy at law by action of trover.

The bill has an appearance in form, at least, of claiming equitable remedy and being of equitable jurisdiction, as it charges fraud and prays a discovery and account. How far, under the other circumstances of this case, the court would be disposed to entertain jurisdiction of it on the equity side, we do not feel disposed now to inquire, as it is a sufficient reason against sustaining the objections at this time that it comes too late.

A total want of jurisdiction of the court over the parties, or the subject matter of the suit, may be successfully urged at any time, or in any stage of the proceedings. But where the court has jurisdiction of the parties and the cause of action, and the objection is to the mode in which relief is sought, it should be interposed at the first opportunity. "A party ought not to be suffered to wade through a tedious and expensive litigation, and then, in the very last stage of the cause, an objection be made to the jurisdiction of the court." (Post vs. Kingburg, 9 John. 493; Ludlow vs. Simonds, 2 Caim's cases in Eq., 1.)

This bill was filed in October, 1841, and the cause put to issue in April, 1842, and the testimony taken; and not till the 1st November, 1847, more than six years after the filing of the bill, has this objection been interposed. This court has jurisdiction both of the parties and of the cause of action; under such circumstances, it is well settled that where a defendant has answered and submitted himself to the jurisdiction of the court, without objection, it is too late to insist that the complainant has a perfect remedy at law. (Grandon vs. Leroy, 2 Paige, 509.)

2. The same remarks will apply to the objection that Esenwein was not made a party. He had an interest in the subject matter of the suit, though not in its object. And although he did not reside within the jurisdiction of the court, yet in strict propriety he should have been made a party to the bill, so that he might have come in and answered if he chose. (Story Eq Pl., § 78.) But this objection, like the preceding, should have been interposed at a proper time, and not after issue formed, and the lapse of some six or seven years. (Calvert on Parties, 113, § 4; 4 Paige, 510; Story vs. Livingston, 13 Peters, 375.)

3d. Having thus disposed of these preliminary objections, we come to the merits of the controversy.

It is not denied that the complainants were the owners of the two hundred and fifty-six boxes of tobacco, which the defendant, Warner, received from Caprano, the clerk of Esenwein, and afterwards delivered to the defendants, Heald, Woodward and Co. They have converted the property of complainants to their own use; why should they not pay them for it?

In the first answer filed by Warner, he alleged as his reason for not being willing to pay the complainants the value of their tobacco, that he had purchased it from Esenwein in the usual course of business, without any knowledge of complainant's title, and "had paid for the same the full value and price thereof." This answer was excepted to as insufficient, (and very justly, too, for instead of a discovery of the truth, it was a most palpable endeavor to veil and conceal it, under general assertions which might be true in their letter, yet false in their suggestion.) And in his second answer he denies that he took the tobacco as security or payment of a precedent debt, and yet that the mode of payment was by lifting his own notes lent to Esenwein, and which did not become due till after the disclosure of complainant's title, and the filing of this bill. By the copy of his account current annexed, it appears that unless the property had been taken to pay or secure said accommodation notes not yet due, Warner was largely in debt to Esenwein, and continued so till about the time he filed his answer.

It is no doubt a well established principle of the law, that "not only will a principal be bound by actual payment to his factor, but if the latter sells goods as his own, and the buyer knows nothing of any principal, the buyer may set off any demand he may have on the factor against the demand for such goods, made by the principal. (George vs. Clagget, 7 T. R., 359, &c., &c.) The reason and extent of this rule are well stated by C. J. Denman, in the case of Sims vs. Bond, (5 Barn. & Adolph., 393.) "It is a well established rule of law," says he, "that when a contract, not under seal, is made with an agent in his own name, for an undisclosed principal, either the agent or the principal may sue upon it; the defendant, in the latter case, being entitled to be placed in the same situation, at the time of the disclosure of the real principal, as if the agent had been the contracting party." (See, also, Smith's Leading Cases, 44 L. L., 124.)

In the case of Moore vs. Clementson, (2 Camp'l, 22,) it was decided, "that if, before the goods are all delivered, and before any part of them is paid for, the purchaser is informed that they belonged to a third person, he will not be allowed, in an action brought by the principal to recover the price of such goods, to set-off a debt due from him to the factor."

And in the case of Warner vs. M'Coy, (1 M. & W., 591,) the purchaser was allowed his set-off for acceptances given to the factor, and coming due after disclosure of the principal, because the jury found that

he bona fide believed that he was purchasing from the factor, and that the factor sold to pay himself advances, and took the purchaser's acceptance for that purpose.

When a purchaser claims to set off the debt of the factor against the owner, he should be able to show some superior equity. If he paid his money for the goods; if he gave acceptances or assumed other responsibilities to the factor, on the faith of his being the owner, before disclosure of the principal, he would have such an equity. But if, as this answer asserts, he did not take the goods in payment of a precedent debt, nor to secure himself from precedent liabilities; if he paid no money, and assumed no new responsibility to, or for, the factor, on the faith of his purchase, till after the disclosure of the principal, it is not easy to perceive how the payment of a consideration to the factor, post litem motam, can give him a superior equity, and a right of set-off against the principal. It is true that Esenwein had failed, was insolvent, was absent, and Warner felt certain that he would be compelled to lift his loaned paper when it became due; and this might be a very sufficient reason why Warner should make the purchase to secure himself; but he denies all this in his answer, while he shows no right of set-off subsisting at the time of the disclosure of the principal, or payment to him, or on his account, till after suit brought.

But assuming that these prospective liabilities, from a loan of credit made more than a month before this purchase, would, under ordinary circumstances, constitute a just set-off, and give the purchaser a higher equity than the owner, yet it appears to us very clear, not only from the testimony in the cause, but from the palpable adumbration of the facts in the answer, (while it nevertheless fails to conceal the truth,) that this was not a transaction in the usual course of business, where the purchaser was not bound to inquire for the principal, or has gained any equity from his innocence or bona fides.

That the property was not taken in pledge, or to hold as a collateral security, and the transaction was therefore, in form, a sale or purchase, is no doubt literally true. But when we consider the facts and circumstances attending the transaction, to call it a purchase or sale, in the ordinary or usual course of business, would certainly not be giving it its true character.

1. Esenwein had gone to Europe embarrassed in his circumstances, as was known to his friends, of whom Warner was one.

2d. Warner and Co. had lent him their notes, "to enable his house to meet its liabilities" during his absence, in expectation that Esenwein might make some arrangement with his friends in Europe to extricate himself and save his friends here.

3d. Warner, aware of Esenwein's embarrassments and actual insolvency or inability to meet his engagements, "and becoming satisfied in his own mind that he had been deceived by him," goes to New York on the second of September, takes possession of a large portion of the effects of Esenwein, "in a hurried, unbusiness-like, harem scarem manner," (I use the words of a witness,) stating, at the same time,

that "he had come to New York to see if he could not, with the aid of friends, get the house of Esenwein and Co. out of its approaching difficulties, but he had failed, and that he had bought the goods from Caprano to secure his debt."

4. This "purchase" included not only "tobacco, wines and segars," and other articles of merchandise, to the amount of nearly thirty thousand dollars, but the notes and book accounts of Esenwein to the amount of about fifteen thousand dollars.

That Warner had a right, by this act of appropriation, or "purchase," of a failing concern, to shield himself from loss, may be admitted, while it might be the subject of some doubt whether he had obtained such a title to the property of a stranger by such a "purchase" as to give him a higher equity than the owner, even when he had no notice of his title. He was exercising an extreme right, and carving his pound of flesh for himself at the probable expense of others. In a common purchase, in the usual course of business, it is not necessary to inquire of a factor to whom the property belongs which he offers for sale, for it is presumed he has a right to dispose of it in the ordinary way. But when a scramble is commenced for the effects of a failing and insolvent debtor, who is known to be a factor, usually having large consignments of the property of others in his possession, the creditor is in a different position from an ordinary purchaser, and should exercise the most transparent good faith when there is a ground for suspicion that he may probably infringe on the rights of others.

He knows that it is dishonest for a factor, in failing and insolvent circumstances, to apply the property of his principal to the payment of his own debts.

He knows that if the factor has made acceptances on the faith of the goods of his principal, such a disposition of them on the eve of insolvency must necessarily be injurious to him. He is therefore bound to inquire, and not carelessly participate in a wrongful action, nor claim an equity from his ignorance of what he might and ought to have known. It was generally and publicly known that Esenwein was the factor of Martin and Franklin; and why was Warner alone ignorant of it?

He knew that Esenwein did business as a factor, as well as on his own account.

He saw the name of Martin and Franklin on the boxes delivered to him. It is true that it was no necessary inference from this fact that they were then the owners; but it was prima facie evidence that they were the manufacturers, and had been the owners, and that the chances were at least equal that they continued to be so, as Esenwein was a factor, and sold tobacco for the manufacturers.

These facts were amply sufficient to put him on inquiry, and the means of knowledge were fully within his power.

The books of Esenwein, or a question to Caprano, would at once have furnished him with certain and complete information. (See Baring vs. Corrie, 2 B. & A., 137.)

A glance at those books would have shown him that the property belonged to complainants, and that although Esenwein had given acceptances to their probable value, yet a moment's reflection must have convinced him that Caprano had no authority to apply the means entrusted to him to lift complainant's acceptances to the payment or security of Warner's actual or prospective claims, and thus defraud complainants—a result that must necessarily follow this disposition of the assets of a failing and insolvent house.

It is true, Esenwein was not technically a bankrupt, nor had he taken the benefit of the insolvent laws; but he was, in the true sense of the term, "insolvent"—that is, unable to pay his debts or meet his liabilities. Under such circumstances, whether the transaction be denominated a distress, a seizure, or a "purchase," the defendant was as much bound to inquire, as if he had been taking a pledge of the goods before the passage of the factor's act. (See Newson vs. Thornton, 6 East., 17, 43. (Graham vs. Dyster, 6 M. & S., 1—4.)

The fact is transparent in this case from the answer itself, and the vain attempts to veil the true nature of this transaction, that it was caused by the insolvency or expected failure of Esenwein and Co.; that Warner entered into it instructed or fully aware of this rule of law, "that where you purchase from a factor who does not disclose his principal, you may set off the debt due by the factor against the price of his goods;" that this purchase was made with a view to gain the benefit of this principle, and to thus obtain security for impending liabilities; and that his ignorance of complainants' rights (if it existed at all) was voluntary, premeditated, and mala fide—an affected obliquity of vision with regard to facts which lay in his way and courted his attention.

We are of opinion, therefore, that this case does not disclose such an equity in the defendants, Warner and Co., as will entitle them to convert the property of complainants to their own use without compensation.

Nor can we perceive that the defendants, Heald, Woodward and Co., have any greater equity than Warner and Co. The property was sent from New York, and immediately put into the possession of Heald, Woodward and Co. They had full knowledge of the true nature of the transaction by which Warner obtained possession of the goods. They had paid nothing to Warner for them till after notice of complainants' claim, and institution of this suit. They must therefore be held, jointly and severally, liable with Warner and Co.

Two several objections have been urged against complainants' right to recover, which it will be proper very briefly to notice, more for the purpose of showing that they have not been overlooked than for their intrinsic value.

1st. That the complainants have not tendered to defendants the acceptances given by Esenwein and lifted by them.

2d. The receipt given by complainants to Esenwein since the institution of this suit for the price of other goods sold by him and very properly accounted for.